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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 679/2017

GANGA DUTT

..... Petitioner

Through Mr. Mohit Ramdeo, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ORS

..... Respondents

Through Mr.Dhanesh Relan and Ms.Akshita Manocha, Advs. for DDA.

Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti Tyagi, Adv for R-2.

Mr. Udit Gupta, Adv for R-3.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **20.09.2017**

1 The petitioner is seeking the following prayers:-

(A) *Accept the present petition, issue Writ or Certiorari by respondent No.2 bearing No. F1 (172)LM/2001/L & B Dated 19.08.2002 and (ii) alleged Kabza Karyawahi dated 11.11.2003 between respondents No. 1 & 4 in respect of plot of petitioner measuring 125 square yards comprised in khasra No. 24/3, situated in the revenue estate of village Kakrola, colony known as Tara Nagar, New Delhi;*

(B) *Restrain respondent No.1, its officials, servants, etc. from dispossessing petitioner from the plot in question in khasra No. 24/3, situated in the revenue estate of village Kakrola, colony known as Tara Nagar, New Delhi and from interfering in ingress and egress of aforesaid plot by petitioner. They are also liable to be restrained from*

erecting any boundary wall round the aforesaid land of petitioner.

(C) Direct respondents, except respondent No. 3, to pay costs of the present petition to petitioner as petitioner has been foisted with present litigation owing to their arbitrary acts.

2 The petition had been filed in January, 2017. On the first date, time had been granted to the petitioner to place on record the orders passed in Suit No. 152/2002. Matter had been adjourned for several dates thereafter. On 12.07.2017, a last opportunity had been granted to the petitioner to file the documents in terms of the earlier directions of this Court. The order passed in Suit No. 152/2002 has been placed on record. This order reflects that on 02.12.2005, Suit No.152/2002 has been dismissed in default as up to even post lunch hour, none had appeared for the plaintiff. The Court had noted that the petitioner is not interested in pursuing the aforenoted suit. Accordingly, the suit had been dismissed in default.

3 The averments in the petition disclose that the petitioner is in possession of the subject land since the year 1982 i.e. a plot measuring 125 square yards comprised in khasra No. 24/3, situated in the revenue estate of village Kakrola, Tehsil Mehrauli. This plot had been allotted to him under 20 Point Programme. The prayers made in the petition have already been noted. The prayer being that the petitioner should not be illegally dispossessed from the aforenoted property and there should be no interference in his property. The Notification of the respondent dated 19.08.2002 had also been challenged in terms of which certain lands including land in village

Kakrola being Gaon Sabha land had been placed at the disposal of the Delhi Development Authority (DDA) for the purpose of development in accordance with the provisions of law; meaning thereby that this Notification had been issued stating that the land which was earlier belonging to Gaon Sabha (details of which find mention in the said Notification) will now stands transferred to the DDA for the purpose of its development.

4 Learned counsel for respondent No.1-DDA, respondent No.2-Land and Building Department and respondents No. 3 & 4 submit that this petition is nothing but an abuse of the process of the Court. It is pointed out that two suits had been filed by the petitioner i.e. in the year 2002 (Suit No. 152/2002) which had been dismissed in default; a second suit had been filed in the year 2012 which had been withdrawn. The petitioner has failed to prove his possession on the aforesaid land; he neither has any possessory rights and much less any document of title; the petitioner has illegally trespassed in the property. This petition is an abuse of the process of the Court.

5 These submissions have been countered.

6 Record shows that the petitioner claims himself to be in possession of the aforementioned 125 square yards comprised in khasra No. 24/3, situated in the revenue estate of village Kakrola in terms of an allotment which had been granted in his favour in the year 1982 under a 20 Point Programme. He was aggrieved by a Notification dated 19.08.2002. This Notification is placed at page 25 of the paper book. This Notification (discussed supra) states that the Gaon Sabha

land of village Kakrola shown in column 3 stands transferred to the DDA. This Notification does not mention the details of the land of the said village; no such document has also been placed on record. The land of the petitioner allegedly falls in village Kakrola. Which part of the village Kakrola stood transferred to the DDA is not known.

7 Be that as it may, this Court notes that the petitioner had filed a first suit which was a suit for permanent injunction in the year 2002 (Suit No. 152/2002). This suit had been dismissed in default on 21.02.2005 as none had appeared on behalf of the plaintiff and the Court had noted the dis-interest of the plaintiff thereby dismissing the suit in default. The second suit (CS No.114/2015) had thereafter been filed by the plaintiff. The DDA was the sole defendant. This was a suit for permanent injunction. The prayers made in the suit was that the peaceful possession of the petitioner should not be interfered with in the aforementioned property i.e. plot measuring 125 square yards in khasra No. 24/3. A written statement and reply had been filed by the DDA. The defence of the DDA was that there was nothing on record to show that the plaintiff was either a lawful owner or in possession of the aforementioned property; it was stated that this is a Government land upon which the construction has to be demolished; the plaintiff has no cause of action. A detailed order had been passed on the interim application filed by the plaintiff i.e. application under Order XXXIX Rules 1 & 2 of the CPC. This order was passed on 03.02.2016. The Court was of the view that the plaintiff has failed to substantiate a prima-facie case of possession over the suit land; he was possibly an

encroacher on Government land. Matter was thereafter renotified on a preliminary issue framed i.e. on the maintainability of the suit. On 03.10.2016, on an application filed by the petitioner (under Order XXIII Rule 3 of the CPC), the suit had been permitted to be withdrawn. Contention of the plaintiff was that he wanted to file either a fresh suit or a writ petition. This writ petition has now surfaced.

8 This Court is of the view that this petition is not maintainable. The petitioner has already filed two suits. In the first suit he had not appeared as a result of which it had been dismissed in default. The second suit was voluntarily withdrawn by him. In this suit, petitioner had raised a grievance about the Notification dated 19.08.2002. Although the Court had noted that no liberty is required for the petitioner to take his independent remedy by filing a writ petition yet this Court notes that the prayers made in the petition are nothing but a replica of the prayers made in the second suit (CSNo.114/2015). This Court also notes that the petitioner has suffered a long order on merits on his interim application dated 03.02.2016 which had clearly recorded a finding that the petitioner is not in possession of the suit property and the right of the petitioner to continue with the suit was in doubt for which purpose a preliminary issue on the maintainability of the suit had been framed. By a clever move, the petitioner had thereafter chosen to withdraw the suit. The petitioner is doing nothing but re-agitating the same cause by filing this writ petition. The application under Order XXXIX Rules 1 & 2 of the CPC had

been decided on merits. That order was never challenged. It stares in the face of the petitioner. Submission of the learned counsel for the respondent that the principle of res-judicata as contained in Section 11 of the CPC would apply is also an argument which cannot be brushed aside easily. That apart, this Court notes that the prayers made in the petition being nothing but a replica of the prayers made in the earlier suit (CS No.114/2015) and that suit having been withdrawn by the petitioner consciously and voluntarily pursuant to the unfavourable order suffered by him on his interim application, this petition is nothing short of an abuse of the process of the Court. The petitioner has specifically been put a query that if he has any documents of title with him, he has no answer. Even presuming that he was an allottee since 1982, he has no documents with him to show that he has the possessory/allotment rights in the property. Not a single document has been placed on record to substantiate this submission. He admits that he has no such document.

9 This petition is nothing but a wastage of precious time of the Court. Dismissed with costs quantified at Rs.25,000/-.

INDERMEET KAUR, J

SEPTEMBER 20, 2017

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