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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 09.01.2017

Judgment delivered on : 11.01.2017

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W.P.(C) 3181/2015 & C.M. No.5676/2015

MAHESH CHAND SHARMA

..... Petitioner

Through Mr.Suresh Sharma, Advocate.

versus

JAMIA MILLIA ISLAMIA UNIVERSITY & ANR.

..... Respondents

Through Mr.S.Wasim A. Qadri, Advocate.

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W.P.(C) 3486/2015 & C.M. No.6243/2015

AHSAN ALI

..... Petitioner

Through Mr.Suresh Sharma, Advocate.

versus

JAMIA MILLIA ISLAMIA UNIVERSITY & ANR.

..... Respondents

Through Mr.S.Wasim A. Qadri, Advocate.

+

W.P.(C) 3487/2015 & C.M. No.6245/2015

SHAFI AHMAD

..... Petitioner

Through Mr.Suresh Sharma, Advocate.

versus

JAMIA MILLIA ISLAMIA UNIVERSITY & ANR.

..... Respondents

Through Mr.S.Wasim A. Qadri, Advocate.

+ W.P.(C) 3974/2015 & C.M. No.7105/2015

TAUFEEQ ALI

..... Petitioner

Through Mr.Suresh Sharma, Advocate.

versus

JAMIA MILLIA ISLAMIA UNIVERSITY & ANR.

..... Respondents

Through Mr.S.Wasim A. Qadri, Advocate.

+ W.P.(C) 4140/2015 & C.M. No.7513/2015

SAMAR HASAN

..... Petitioner

Through Mr.Suresh Sharma, Advocate.

versus

JAMIA MILLIA ISLAMIA UNIVERSITY & ANR.

..... Respondents

Through Mr.S.Wasim A. Qadri, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 There are five petitioners before this Court. They are aggrieved by the common impugned order dated 20.02.2015 vide which the learned District Judge in its capacity as the appellate body of the Estate Officer had endorsed the findings returned by the Estate Officer; the petitioners had been re-endorsed as the 'unauthorized occupants' within the meaning of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter

referred to as the 'said Act'). The petitioners had been directed forthwith to vacate the demised premises.

2 The averments in the writ petition disclose that the petitioner Mahesh Chand Sharma was in possession of 157.15 square yards of a property forming a part of khasra No. 112. Petitioner No. 2 Ahsan Ali was a subsequent purchaser of land measuring 125.97 square yards having purchased it from Mahesh Chand Sharma. Petitioner No. 3 Shafi Ahmad is also a purchaser from Mahesh Chand Sharma to the extent of 34.43 square yards of land. Taufeeq Ali had also purchased another piece of land from Mahesh Chand Sharma measuring 20.14 square yards of land. Petitioner No. 5 Samar Hasan had also purchased a piece of land from Mahesh Chand Sharma in the aforementioned khasra i.e. khasra No. 113 measuring 20.14 square yards. These purchases were based on registered agreements to sell, Will etc.; they were not sale deeds.

3 Lead case has been treated as the case of Mahesh Chand Sharma i.e. W.P. (C) No.3181/2015. The case of Mahesh Chand Sharma is that he was the original owner of this aforementioned land. Petitioners No. 2 to 5 have derived their interest from petitioner No. 1.

4 The case of petitioner No. 1 Mahesh Chand Sharma is that he is in possession of this property since the year 1972. He has been paying house-tax and electricity charges for the aforementioned property of which he is in possession since 1972 over which a pucca structure had been built by him. This property falls in khasra No. 112 and not 113 which is the case set up by the respondent; the respondent is claiming his title over the land falling in khasra No. 113; the property of the petitioner falls in khasra No. 112 which is distinct from khasra No. 113 and since the identity of the property is itself in dispute, the impugned order directing eviction of the petitioners is a nullity.

5 Learned counsel for the petitioner to support his submission that he is the owner of this property forming part of khasra No. 112 has relied upon various documents. The first document highlighted by the learned counsel for the petitioner is a khasra girdawari (Annexure P-1) evidencing that in the year 1995 khasra No. 112 was being cultivated by one Chuttan. The second document relied upon by him is an electricity charge which he has paid of Rs.260/- which was in the year 1979; the house-tax has also been paid for property bearing No. 113/1, Gafur Nagar, New Delhi which was again of the year 1984-1985. These documents are Annexure P-2 and P-3. Annexure P-

4 is a certificate of payment issued by the DDA where payment through cheque has been made in the year 1978 by petitioner No. 1 qua premises bearing No. 113/1, Gafur Nagar, Okhla. Another document relied upon by the petitioner is again an electricity bill dated 31.03.1979 purported to have been paid by petitioner No. 1 as charges for property bearing No. 113/1, Gafur Nagar; Annexure P-6 is the another document to the same effect.

6 Learned counsel for the petitioner submits that these documents clearly evidence that as far back as in 1970's, petitioner No. 1 was in possession of this property. He had purchased this property from the original cultivator namely one Chuttan. Relevant would it be to note that it has come on record in the evidence recorded before the Estate Officer that petitioner No. 1 (examined as RW-3) had purchased this property from Chuttan vide documents of title but the said documents could not be produced before the Estate Officer as the same had been washed away in the rain. This was admitted by RW-3 in his cross-examination; no FIR has been lodged before the police authorities that these documents had been washed away in the flood/rain.

7 This aforementioned statement of RW-3 has been highlighted by the learned counsel for the respondent to support his submission that the

petitioner is neither the owner and nor in legal occupation of the aforementioned property; the submission of the petitioner that there is a dispute about the identity of the property is also an eye-wash as the documents filed by the petitioner himself reflect that the demised premises are forming a part of khasra No. 113.

8 This Court also notes the admitted position that earlier the respondent had filed a suit for permanent and mandatory injunction (Civil Suit No. 493/1983) against the petitioner but the same had been withdrawn in the year 1992 vide order dated 19.10.1992. The submission of the respondent on this count is that the respondent had since been granted the status of a University and being a public body, it was advised that proceedings under the said Act would be the appropriate remedy for the Department and as such this suit was accordingly withdrawn.

9 The fact that the respondent Corporation has attained the status of Central University is not in dispute. Thus the submission of the respondent that the proceedings under the said Act were maintainable by the respondent against the petitioner is a submission which is factually correct.

10 The most vehement submission which has been made by the learned counsel for the petitioner is that the proceedings under the said Act would

not be applicable if there is a bonafide dispute regarding the title of a property and for this proposition, he has placed reliance upon AIR 1982 SC 1081 Government of Andhra Pradesh Vs. Bandi Venkatarama and others. There is no doubt to this legal proposition. Legal proposition being that if a bonafide dispute regarding the title to any property is raised, the unilateral decision by the Government in its own favour that the property belongs to it cannot be acceded to; the summary procedure under Section 6 of the said Act in such an eventuality would not be available.

11 However the crux of the question which has to be decided by this Court is whether there is a bonafide dispute qua the title of the property or not? This shall now be examined in the ensuing paragraphs.

12 The documents relied upon by the petitioner are no documents of title. The only document worth a revisit is the khasra girdawari; this is also not a document of title. It only evidences the cultivatory possession of the name of the person mentioned in column No. 3. The name of the aforementioned person is Chuttan. Column No. 3 records that Chuttan is the shareholder of Ramji Lal. The possessory rights in column No. 8 mention the name of Mahesh Chand Sharma. This document is of the year 1995. The other documents relied upon by the petitioner are only electricity bills and

payment of house-tax. These are unilateral payments made by petitioner No.

1. Relevant would it be to note that all these later documents refer to property No. 113/1, Gafur Nagar, New Delhi. In the course of evidence which had been adduced before the Estate Officer; petitioner No. 1(RW-3) had deposed that he had constructed this house in the year 1972 and he was in possession since then; the land was originally owned by Chuttan. He had purchased this land from Chauttan vide certain documents which documents had got destroyed in the heavy rain of the year 1978; he had not filed any complaint about the destruction of these documents. RW-3 admitted that he had not checked the title of Chuttan and was unaware whether Chuttan was the owner of this land or not; he further admitted that this property falls in khasra No. 112 as also in khasra No. 113; his father Ramphal had never resided in this house.

13 This evidence on record clearly establishes that the title of Chuttan itself was in dispute; petitioner No. 1 had never checked the title document of Chuttan; he also had no document in his hand to establish that he had purchased this land from Chuttan as was the case set up by him. Per contra, the respondent had produced the sale deed executed by one Ram Singh qua land measuring 6 bigha and 4 biswas in khasra No. 113. Khatoni No. 1

situated in village Jogabai, Tehsil and District Delhi as per jamabandi of the year 1943-44. This document is a registered document. It is on record. There is no dispute to this document. In fact no dispute has been raised upon this document. This document evidences the fact that Ram Singh had executed this sale deed in favour of Dr. Zakir Hussain. The date of execution of this document is 20.12.1948. It is also not in dispute that Dr. Zakir Hussain had donated this land to the respondent/Jamia Millia which in the year 1988 attained the title of a Central University.

14 Record further shows that the respondent had filed a suit for permanent and mandatory injunction against the petitioner but had withdrawn it thereafter on 19.10.1992. This was for the reason that the respondent had attained the status of Central University and was authorized to evict the petitioner under the said Act. Proceedings under the said Act thereafter ensued i.e. after the withdrawal of the said proceedings. Notice under Section 5 of the said Act was issued by the Estate Officer of the Jamia Millia on 25.11.1991. This notice had been issued to Ramphal, the father of petitioner No. 1. The case set up by the respondent was that this land was given by Jamia Millia to Ramphal for keeping his cattle as he used to supply milk to the respondent/Jamia Millia; this land was given to him on the

condition that whenever Jamia would need the land, it would be vacated by Ramphal and handed over to Jamia. However, when Jamia asked Ramphal to vacate the premises in 1979, Ramphal changed his mind and encroached upon the land in question. Accordingly two suits had been filed by the respondent against Ramphal (father of petitioner No. 1). As noted supra, these suits were for permanent and mandatory injunction. However these suits were withdrawn on legal advice as the respondent had attained the status of a Central University in the year 1988 and as such proceedings under the said Act were initiated thereafter.

15 Relevant would it be to note that in proceedings before the Estate Officer, Ramphal had appeared and his defence was that he had not raised any construction on the suit land but the same had been raised by his son Mahesh Chand Sharma and there were other persons who were also occupying the land. Accordingly fresh notice dated 30.11.1993 under the said Act issued to the unauthorized occupants and 10 other persons.

16 Ramphal, (father of petitioner No.1) had expired on 23.10.1998. Thereafter these proceedings were withdrawn and fresh notices under Section 4 of the said Act were issued to petitioners No. 1 to 5.

17 The status of petitioners No. 2 to 5 is dependent upon the status of petitioner No. 1; they were admittedly purchasers of the aforementioned land from petitioner No. 1. If this Court holds that petitioner No. 1 himself has no right and title to the aforementioned land, the status of petitioners No. 2 to 5 must necessarily fail.

18 This Court, at the cost of repetition, notes that no document had been produced by petitioner No. 1 to support his stand that he had purchased this property from Chuttan; Chuttan himself has no document of title as petitioner No. 1 in the course of evidence admitted that he had not checked the title of Chuttan and there was no document to show that Chuttan was the owner of the aforementioned land. This was also not his written defence before the Estate Officer; his written defence being that this land had been given to him by the villagers; this had only erupted in his evidence and being beyond his pleading was even otherwise liable to be rejected. Thus the question of petitioner No. 1 acquiring title to the aforementioned land would not arise.

19 The only dispute which now remains to be examined qua petitioner No. 1 is whether property falls in khasra No. 112 or khasra No. 113. For the said purpose, it would be necessary to relegate back to the documents filed by the petitioner himself. The first document relied upon by the petitioner is

the khasra girdawari purported to be in the name of Chuttan which describes it khasra No. 112. Thereafter all the other documents which includes the payment of electricity bills and house tax refer the property as property No. 113/1. The khasra girdawari has described the village as Jogabai. The subsequent documents refer the property to be located in Gafur Nagar. The case of the respondent is that Gafur Nagar is a part of village Jogabai. The defence of Ramphal (father of petitioner No.1) before the Estate Officer was also never to the effect that this property is a part of khasra No. 112 and not a part of khasra No. 113; he had admitted that construction upon this property had been raised upon it by his son Mahesh Chand Sharma and Mahesh Chand Sharma had parted with his land in favour of petitioners No. 2 to 5. Ramphal had died in the year 1998 and thereafter fresh proceedings had been initiated under the said Act by the Estate Officer against Mahesh Chand Sharma. The extract of reply of Mahesh Chand Sharma has been reproduced by the Estate Officer in his order. In this reply, the defence of petitioner No. 1 was never that he had purchased this land from Chuttan as has been vehemently argued before this Court; his defence before the Estate Officer was that this land had been given to him by the villagers as he was a social worker. On the other hand, his father Ramphal had before the Estate Officer

disclosed that his son (petitioner No.1) had constructed upon his land and parted with it.

20 The Estate Officer had thus rightly concluded that the defence of petitioner No. 1 is no defence in the eye of law. He has not built up any prima-facie title to the disputed property which in any manner could detract the application of the said Act. The father of petitioner No.1 (Ramphal) had honestly disclosed that his son had constructed upon his land which had been given to him; petitioner No. 1 had also parted with his land.

21 There also appears to be no dispute about the identity of the suit property as petitioner No. 1 in the course of his evidence (as RW-3) has admitted that Gafur Nagar falls both in khasra No. 112 and khasra No. 113. The first document relied upon by petitioner No. 1 which is a khasra girdawari of Chuttan (not a document of title) relates to khasra No. 112 but thereafter all other documents relate to property No. 113/1, Gafur Nagar. The khasra girdawari has described the property falling in village Jogabai. RW-3 has admitted that Gafur Nagar falls in khasra No. 112 meaning thereby that Gafur Nagar is a part of village Jogabai.

22 Per contra the admitted document of title produced by the respondent which is the sale deed dated 20.12.1948 relates to land measuring 6 bigha

and 4 biswas in khasra No. 113. Khatoni No. 1 situated in village Jogabai is in favour of Dr. Zakir Hussan who had admittedly donated this property to the respondent/Jamia Millia. The respondent had thus been able to establish that he is the owner of the land and thus entitled to initiate proceedings under the said Act against the petitioner.

23 The claim of adverse possession sought to be set up by the petitioner was also rightly rejected. The document Ex.RW-3/6 which is a letter dated 04.02.1979 written by a member of the MCD details the action proposed against petitioner No.1 for the construction carried out on the aforementioned property; moreover two civil suits had admittedly also been filed by the respondent against the father of petitioner No. 1 Ramphal in the year 1979 and in the year 1983 seeking vacation of the unauthorized occupation of Ramphal; his claim of adverse possession which is a claim to be set up against the real owner was not established.; petitioner No. 1 was never in peaceful and uninterrupted possession. Petitioner No. 1 has also not been able to set up any independent title in the suit property.

24 Since the claim of petitioner No.1 has failed; the necessary corollary is that the case of petitioners No. 2 to 5 (who were purchasers of the said land from petitioner No.1) must also necessarily fail.

25 The learned Additional District Judge had rightly endorsed the findings returned by the Estate Officers.

26 For all the aforementioned reasons, these writ petitions have no merit. They are accordingly dismissed.

INDERMEET KAUR, J

JANUARY 11, 2017

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