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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 11th January, 2018

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RFA 821/2016

NORTH DELHI MUNICIPAL CORPORATION Appellant

Through: Ms. Mini Pushkarna, Standing
Counsel with Ms. Anushruti and Ms.
Vasundhara Nayyar, Advocates.

versus

RAJU SONI

..... Respondent

Through: Mr. Yashvir Sethi and Mr. Saksham
Sethi, Advocates for R-1.
Mr. Varun Nischal, Advocate for
Delhi Police.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 38630/2016 (delay in filing), CM APPL. 38631/2016 (delay in re-filing), CM APPL. 38629/2016 (stay) in RFA 821/2016

1. Arguments have been heard on the applications for condonation of delay in filing and re-filing as also on merits.
2. The present appeal impugns order dated 20th July, 2015 passed by learned Additional District Judge by which the suit by the Respondent/Plaintiff (*hereinafter 'Plaintiff'*) has been decreed for a sum of Rs.50,000/- along with the *pendente lite* and future interest @ 6% per annum.
3. The limitation period for filing the appeal expired on 19th October, 2015. The appeal was filed on 29th January, 2016 and on the same date the Registry scrutinized the appeal. The matter was returned under objections.

On 5th October 2016, the appeal was re-filed. The Appellant ('*hereinafter MCD*') prays for condonation of delay of 97 days in filing the appeal and 215 days in re-filing the appeal.

4. The Court has perused the reasons given in both the applications. There is no plausible and valid explanation firstly in filing, inasmuch as the certified copy was obtained by the MCD on 31st August, 2015 itself. Despite that, the appeal was not filed till January, 2016. Insofar as the re-filing is concerned, the only reason given is that the file was lost by the clerk of the counsel.

5. The Court has perused the record as also the reasons sought for condonation of delay. The Supreme Court in ***Office of Chief Post Master General & Ors. v Living Media India Ltd. & Anr.*** 2012 Law Suit (SC) 124 clearly held that the law of limitation binds the governmental authorities and there cannot be any relaxation given to the same. Condonation of delay has been held to be the exception and not the rule.

6. Condonation insofar as re-filing is concerned, the same appears to be a mistake by the office of the counsel engaged by the MCD. In view thereof, the MCD cannot be held responsible for the same. Condonation of delay in re-filing is condoned.

7. Insofar as the delay of 97 days after obtaining the certified copy on 31st September, 2015 is concerned, though seeking of legal opinion is not a tenable ground, in the facts and circumstances of this case, the delay of 97 days is condoned subject to payment of costs of Rs. 10,000/-.

8. On merits, the case of the MCD is that the Plaintiff was an unauthorized occupant of public land and thus, the demolition which was carried out, was valid and legal. The suit filed by the Plaintiff prays for a

sum of Rs.10 Lakhs towards damages on the ground that the demolition was illegal and unlawful and was without notice. Learned counsel for the Plaintiff submits that an earlier suit for injunction being Suit no. 45/1992 had been filed by him in which MCD was a party and a restraint order was passed in the said suit on 25th February, 1992. Though the said suit was subsequently dismissed on 31st March 2001, on the date when the demolition took place i.e. 10th August, 2000, the injunction order was in operation and that too without notice. In these circumstances, the learned trial court awarded a sum of Rs.50,000/- along with the *pendente lite* and future interest @ 6% per annum.

9. There is no dispute to the proposition that unauthorized occupation or encroachment of public land cannot be condoned. Authorities are duty bound to ensure that public land is not encroached upon and if encroachments are found, the same ought to be dealt with strictly and in accordance with law. The power of the MCD to take action against unauthorized occupation exists in the statute and has to be exercised in accordance with law.

10. The brief background of the present litigation is that the demolition action had taken place against the Plaintiff for having encroached upon the public land belonging to the MCD. The said demolition action was carried out on 10th August, 2000. Previously the Plaintiff had filed a civil suit bearing no.45/92, which was dismissed by the Trial Court on 31st March, 2001 on the ground that the premises were public premises and no civil suit was maintainable in view of the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The appeal against the said order was dismissed on 16th April, 2001 with the following observations:-

“10. When on the pleadings of the parties, the plaintiff/appellant is established only as an encroacher on Government property, there can be no question of any protection being extended to him. The suit of the plaintiff/appellant could not have been proceeded with, in any case. Moreover, the plaintiff/appellant could have sought and sought only protection against dispossession without due process of law. When the plaintiff/appellant was nothing more than an encroacher on the MCD land, and the settled position in law is that the encroacher can be evicted forthwith from the Government property no relief at all can be granted to the plaintiff/appellant.”

11. In the suit - subject matter of the present appeal, the Plaintiff prayed for a decree in the sum of Rs.10 lakhs towards losses/damages due to agony, harassment, etc. The main ground taken by the Plaintiff was that there was an order of injunction dated 5th November, 1992 against the MCD from demolishing the property which was in subsistence and also that no notice was issued prior to carrying out the demolition. In the said suit, the following issues were framed:

“(1)Whether the suit is not maintainable and barred under the provisions of section 477/478 of the DMC Act for want of service of statutory notice upon the defendant MCD and defendant no.3, 5 and 6?OPD-2,3,5 & 6

(2) Whether the suit is not maintainable for want of notice under Section 140 Delhi Police Act and notice under section 80 CPC? OPD- 7 to 9

(3) Whether the plaintiff is entitled to the damages of Rs.10 lacs as claimed? OPP

(4) Whether the plaintiff is entitled to interest, if

*so, at what rate and for what period? OPP
(5) Relief.”*

12. On issue nos. 3 and 4, after recording evidence in the matter, the Trial Court observed as under:

“Now the question is whether the said demolition was carried out after complying with rules and regulations framed by the MCD. It has been contended by counsel for plaintiff that, for the sake of arguments it is presumed, that plaintiff was in unauthorized possession of suit property, even then the MCD was obliged to issue notice to the plaintiff before demolishing the suit property.”

13. The crux of the Trial Court’s observation is that though the Plaintiff had failed to prove that he was inducted as a tenant in the property, he was able to establish that he was in occupation of the property on the date of demolition. Since the Plaintiff was in occupation of the suit property, demolition could not have taken place without notice to the occupant. The Trial Court found the demolition to be illegal *per se* as the same was done without notice. However, since the Plaintiff had not established that any articles were lying in the suit property on the date of demolition, the Trial Court granted damages to the tune of Rs.50,000/- with interest @ 6% per annum with the observations that the MCD could recover the said amount from the erring officials as per law. On issues no. 2 &3, the Trial Court held that the legal notice was served by the Plaintiff.

14. A perusal of the record reveals that the Plaintiff was an encroacher in the suit property. This finding has been rendered in the earlier proceedings instituted by him. Paragraph 10 of the judgment and order dated 16th April, 2001 upholding the dismissal of the suit of the Plaintiff categorically

observed that the Plaintiff was an encroacher.

15. What, however, emerges from the facts is also that at the time of demolition there was an injunction order operating in favour of the Plaintiff in the earlier suit on 25th February, 1992 and also the fact that no notice was given to him prior to the demolition. In **V. Prabhakar & Ors. v. M.C.D. & Ors.** (dated 22nd March, 2006 in C.S. (OS) No. 1110/2000), this Court held as under:

“12. In view of defendants having failed to prove that the land formed a part of the public land and the plaintiffs have encroached upon the land provisions of Sections 321 and 322 would not apply in the present case and thus the provisions of Section 343 would come into play. This would have required the defendant No. 1 to have issued a notice to the plaintiffs in terms of Sub-Section 1 of Section 343 of the said Act and the proviso makes it clear that no order of demolition could have been passed unless a notice was so given. The witness of the defendants has admitted that no notice was ever given to the plaintiffs.”

16. Though the Plaintiff is an unauthorized occupant/encroacher, the MCD ought to have given the notice prior to the demolition and could not have violated the injunction order operating in the Plaintiff's suit. Under these circumstances, on balance, the decree is modified. The suit is decreed for a sum of Rs 50,000/-. Out of the decretal amount deposited by the MCD in this Court, Rs.50,000/- is directed to be released in favour of the Plaintiff. Costs of Rs. 10,000/- shall also be released to the Plaintiff from the said amount. The balance amount deposited along with any interest accrued upon the deposited amount, shall be released in favour of the MCD. The decree stands modified accordingly.

17. The appeal and all the pending applications stand disposed of in the above terms.

PRATHIBA M. SINGH
Judge

JANUARY 11, 2018/dk

