

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

% **Date of decision: 27th August, 2018**

+ **W.P.(C) 3440/2012**

BHIM SINGH & ORS **.... Petitioners**

Through: Mr. Gaurav Duggal, Adv.

Versus

DELHI JAL BOARD **.... Respondent**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 227 of the Constitution of India impugns the order [dated 20th March, 2012 in PPA No. 05/08/05 and PPA No. 06/08/05 of the Court of District Judge- North West acting as Appellate Officer under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act)] of dismissal of the two appeals preferred by the petitioners with respect to the same immovable property.
2. This petition came up first before this Court on 30th May, 2012 when notice thereof was ordered to be issued and *status quo* ordered to be maintained. Vide subsequent order dated 11th December, 2012, the petition was dismissed for non-prosecution but on application of the petitioners, vide order dated 16th January, 2013, restored to its original position. Vide subsequent order dated 14th July, 2015, finding that the petitioners were delaying these proceedings, the interim order was vacated. Though this Court on 14th July, 2015 asked the respondent Delhi Jal Board (DJB) to report the steps taken for execution of the order, but the counsel for the

petitioners states that no steps have been taken by the respondent DJB for execution of the order.

3. Today, none has appeared for the respondent DJB. It appears that officers of the respondent DJB are interested in perpetuating the possession of the petitioners and are not interested in recovering the possession of their premises with respect to which proceedings under PP Act were initiated.

4. Though the proceedings under PP Act are intended to be summary, but owing to conduct, as aforesaid, of the officers of the respondent DJB, have remained pending since the year 1977.

5. On 31st May, 1977, the predecessor of the respondent DJB i.e. Municipal Corporation of Delhi (MCD) filed a petition before the Estate Officer, under Sections 4 and 7 of the PP Act, pleading (i) that land admeasuring 800.241 acres in villages of Jhasoda, Shanjarpur, Mukandpur, Azadpur, Bhadsua Jehangirpur, Bharola and Dhirpur, situated at Coronation Pillar behind Model Town, Delhi, was property of the MCD and was public premises; (ii) that the petitioners/ their predecessor were in unauthorized occupation of 720 sq. yds. situated in Khasra No. 4 of village Azadpur out of the aforesaid land; (iii) that the MCD had not given the aforesaid piece of land on lease or otherwise to the petitioners herein or their predecessor and the petitioners or their predecessor were mere trespassers; and, (iv) the petitioners were liable to pay damages for unauthorised use and occupation at the rate of 75 paise per sq. yd. per month and a sum of Rs.96,156/- was due towards damages.

6. Notice under Sections 4 and 7 of the PP Act was issued by the Estate Officer to the petitioners/ their predecessor. The petitioners/ their predecessor contested the proceedings before the Estate Officer.

7. On 7th May, 1981, the Estate Officer passed order of eviction and of recovery of damages against the petitioners.
8. The petitioners/ their predecessor preferred two appeals under Section 9 of the PP Act being PPAs No.4/83 and 6/83.
9. It was the contention of the petitioners in PPAs No.4/83 and 6/83, that the MCD had approached the Estate Officer with the plea that the land in possession of the petitioners was situated in Khasra No. 4 of village Azadpur; that it was for the MCD to establish the said fact; though the respondent MCD had produced a witness who stated that he had conducted a survey of the land situated at Coronation Pillar and the land in possession of the petitioners was part of 800.241 acres belonging to the MCD, however during cross-examination, the said witness deposed that every khasra number was different and he could not give measurement of Khasra No. 4; and, that none of the other witnesses of the respondent MCD could also prove that the subject land was in Khasra No. 4 of village Azadpur.
10. On the aforesaid contention of petitioners, PPAs No.4/83 and 6/83 were disposed off vide order dated 22nd July, 1988, by remanding the matter to the Estate Officer, to, after recording fresh evidence, determine the khasra number of the land in possession of the petitioners.
11. Vide Delhi Jal Board Act, 1998, the respondent DJB was constituted and succeeded to the specified functions and properties of MCD.
12. The Estate Officer, in pursuance to the remand aforesaid, vide order dated 19th May, 2005, again ordered eviction of the petitioners and recovery of damages at the rate of 75 paise per sq. yd. per month, that is, Rs. 19,440/- per month from the petitioners, reasoning (i) that the respondent DJB claimed that the petitioners were in possession of 720 sq. yds. in Khasra No.

4 in village Azadpur, having acquired the said land along with other land from Military Estate of Government of India and which was proved by documentary and oral evidence; (ii) that the ownership of respondent DJB of the land in possession of petitioners was not disputed by the petitioners also, although the petitioners claimed ownership in themselves, by forceful possession of the land; (iii) the petitioners had not produced any document of purchase of the said land or acquisition of title of the land in any other manner; (iv) that the claim of the respondent DJB was based on Resolution of the MCD which is a statutory body; (v) the respondent DJB had produced a survey report through its witness regarding demarcation report of the land done by the Patwari, Naib Tehsildar of Revenue Department and proved the same as Exhibit PW2/A; (vi) the identity of the premises as a public premises was thus sufficiently proved by documents on record and was beyond any shadow of doubt; and, (vii) that the damages for use and occupation were assessed as claimed at the rate of Rs. 75 paise per sq. yd. per month.

13. Aggrieved from the order dated 19th May, 2005 of the Estate Officer, PPAs No.05/08/05 and 06/08/05 supra under Section 9 of PP Act were filed and which have been dismissed vide common order impugned in this petition, reasoning (i) that as per order dated 22nd July, 1988 disposing of the earlier appeals preferred by the petitioners, the Estate Officer was to determine whether the land fell in Khasra no.4 of village Azadpur; (ii) that the respondent DJB, pursuant to remand, had filed before the Estate Officer, affidavits by way of evidence of two Naib Tehsildars, deposing so; (iii) despite detailed cross-examination by the petitioners of said two witnesses, their depositions remained creditworthy; (iv) on the contrary the petitioners

had not proved that the land was not situated in Khasra no.4 of village Azadpur and had led no evidence in this respect; (v) there was no reason to take a different view from that taken by Estate Officer; (vi) that there was no merit also in the contention of the petitioners, of the proceedings under PP Act being barred by time because of the petitioners/their predecessors being in possession since 1945, because the respondent DJB had vide Ex. PW2/C proved that land admeasuring 48 *bighas* 7 *biswas* in Khasra No.4 of village Azadpur was transferred by Military Estate Officer Delhi to Delhi Water & Sewarage Board and the petitioners had not led evidence of possession since 1945; even otherwise, limitation of 12 years does not apply against government – vide Section 25 of Limitation Act, 1963, the period of limitation against government is of 30 years; and, (vii) the petitioners had been granted ample opportunity by Estate Officer and there was no violation of principles of natural justice.

14. Though against dismissal of two appeals, even if by common order, two separate petitions ought to have been preferred, but at this late stage this technicality is ignored.

15. The counsel for the petitioners has argued, that the respondent DJB, pursuant to remand, had only filed affidavit dated 2nd May, 2001 of Ganga Ram working as Naib Tehsildar. It is contended that the same does not satisfy the test as required to be fulfilled as per the earlier order dated 22nd July, 1988 of the District Judge remanding the proceedings.

16. I have enquired from the counsel for the petitioners, in which khasra number, according to the petitioners, the land in their possession is situated, if not in Khasra No. 4 of village Azadpur.

17. The counsel for the petitioners has contended that according to the petitioners, the land in their possession is situated in Khasra No. 354/8 of village Azadpur.

18. I have further enquired from the counsel for the petitioners, what is the title of the petitioners to Khasra No. 354/8 of village Azadpur.

19. The counsel for the petitioners fairly states that the petitioners have not proved any title to Khasra No. 354/8 either. In fact, the counsel for the petitioners has not drawn attention to any reply which may have been filed before the Estate Officer and which may show the stand of the petitioners before the Estate Officer. The counsel for the petitioners is also unable to show any proof furnished before the Estate Officer, of the land being part of Khasra No.354/8 of village Azadpur.

20. A reading of the order dated 22nd July, 1988 in earlier appeals preferred by the petitioners against the order of the Estate Officer shows that the petitioners were then claiming to be in adverse possession of the land and that though the petitioners were denying that the land was situated in Khasra no.4 of village Azadpur but there was no real dispute with respect thereto. Be that as it may, I have gone through the evidence led by the respondent DJB pursuant to remand and find no reason/ground, and none has been urged, to, in exercise of jurisdiction under Article 227 of Constitution of India, interfere with the findings of Estate Officer, not interfered with by the District Judge in appeal under Section 9 of the PP Act, of the land in possession of the petitioners being situated in Khasra no.4 of village Azadpur. Suffice it is to state that the findings are based on evidence led before Estate Officer and it is not a case of a finding based on no evidence.

21. That leaves only the pleas, of the proceedings for eviction being barred by time and/or the petitioners having acquired rights by adverse possession, to be considered.

22. Section 27 of the Limitation Act provides, that at the determination of the period 'hereby limited' to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. It is thus quite evident that for invoking Section 27 also, knowledge of the Article of Schedule to the Limitation Act which is being applied, is essential.

23. Limitation for a suit for recovery of possession of immovable property is provided by Articles 64 and 65 of the Schedule to the Limitation Act. While Article 64 provides for limitation for a suit for possession on the basis of previous possession and not on title, as of 12 years from the date of dispossession, Article 65 provides limitation for a suit for possession of immovable property based on title, as of 12 years commencing from the date when the possession of the defendant becomes adverse to the plaintiff.

24. The petitioners herein take the plea of adverse possession, meaning, that they are presuming the claim of respondent DJB for possession, to be on the basis of title. It was thus essential for the petitioners to have pleaded the date on which their possession of the property became adverse to the respondent DJB and for which, the petitioners as per law laid down in *Dagadabai Vs. Abbas @ Gulab Rustum Pinjari* (2017) 13 SCC 705, *Annasaheb Bapusaheb Patil Vs. Balwant Alias Balasaheb Babusaheb Patil* (1995) 2 SCC 543 & *T. Anjanappa Vs. Somalingappa* (2006) 7 SCC 570, were required to first admit exclusive title of the respondent DJB and/or its predecessor. The petitioners have not admitted the exclusive title of the respondent DJB or its predecessor to the property, but are setting up title in

themselves. The plea of adverse possession thus is not available to the petitioners. Moreover, attention to no evidence which the petitioners may have led of declaring themselves as having title in the property adversely to the respondent DJB or its predecessor has been drawn.

25. Else, mere possession of the property, for howsoever long, does not vest any title. It was so held by the Supreme Court in *Sunt Lal Jain Vs. Avtar Singh* (1985) 2 SCC 332 and followed by this Court in *Prabhu Dayal Vs. Roop Kumar* AIR 2005 Del 144 (DB).

26. There is no plea/argument, of the petitioners admitting title of respondent DJB or of any act done by petitioners, asserting title to the land or possession adversely to respondent DJB. Rather, petitioners do not admit title of the respondent DJB.

27. I have enquired, whether the petitioners have got their names entered in any Revenue or other records with respect to the land or have shown their hostility to the owner of the land.

28. The counsel for the petitioners has fairly stated that the petitioners have not done anything of the nature.

29. On yet further enquiry as to what evidence the petitioners led of the land being in Khasra No. 354/8, the counsel for the petitioners states that no evidence was led by the petitioners.

30. In the aforesaid state of affairs, no error requiring interference in exercise of jurisdiction under Article 227 of the Constitution of India is found in the order of the District Judge, acting as Appellate Officer, dismissing the appeal under Section 9 of the Act against the order of eviction. The proceedings before the Estate Officer are required to be summary in nature, as aforesaid, and which is the very genesis of the

enactment of the said law. The purport was to not allow proceedings for recovery of public premises, in unauthorized occupation of some, and to the prejudice of the other citizens, to languish in the Civil Court and be decided immediately. The said purport of enactment of the said law has been defeated in the present case by the proceedings remaining pending since 1976. The Estate Officer and the District Judge, in their respective orders have referred to report of demarcation of land and which demarcation is in consonance with the Delhi Land Revenue Act, 1954 and no error has been pointed out by the counsel for the petitioners therein. Even otherwise, from the aforesaid it transpires that the dispute raised as to the identity of the land, i.e. whether the same is in Khasra No. 4 or in Khasra No. 354/8 is merely a bogey, inasmuch as irrespective of in which khasra number the land is situated, the petitioners have no title to either of the said land. It is not the case of the petitioners that anyone else is claiming adversely to the respondent DJB with respect to the land in possession of the petitioners. As aforesaid, the proceedings have been pending since 1976 and if none has claimed adversely to respondent DJB *qua* the said land, the same is indication enough of the land, as pleaded and proved by respondent DJB, being situated in Khasra No. 4 and being in the ownership of respondent DJB.

31. The counsel for the petitioners has also contended that in a composite proceeding under Sections 4 and 7 of the Act, recording of evidence is mandatory. Reliance in this regard is placed on paras 25, 27 and 29 of *New India Insurance Company Limited Vs. Nusli Neville Wadia* (2008) 3 SCC 279.

32. I have perused the said judgment and do not find the same to be laying down any such absolute proposition. All that it states is that where the application requires production of positive evidence, evidence should be recorded. In the present case, evidence, has been adduced as aforesaid in the form of affidavits by the respondent DJB and rather, there is no evidence of the petitioners.

33. As far as the aspect of damages is concerned, though undoubtedly the Estate Officer has not referred to any evidence qua the rate of damages, but it has been held in (i) *S. Kumar Vs. G.R. Kathpalia* (1999) 77 DLT 266 (DB); (ii) *National Radio and Electronic Co. Ltd. Vs. Motion Pictures Association* (2005) 122 DLT 629; (iii) *S&G Company Vs. India Trades Pvt. Ltd.* 2013 SCC OnLine Del 2670; (iv) *Suman Verma Vs. Sushil Mohini Gupta* 2013 SCC OnLine Del 5081; (v) *Zulfiquar Ali Khan Vs. J.K. Helene Courtis Ltd.* ILR (2010) II Delhi 151; (vi) *Asman Investments Ltd. Vs. K.L. Suneja* (2011) 181 DLT 156; (vii) *Aashish Aggarwal Vs. State Bank of Patiala* (2012) 189 DLT 153; (viii) *Amresh Bajaj Vs. National Hydro Electric Power Corporation* (2017) 245 DLT 564; (ix) *Basant & Co. Vs. Osram India Pvt. Ltd.* (2018) 248 DLT 658; (x) *Modi Infosol Pvt. Ltd. Vs. Sukhdev Kaur* MANU/DE/2542/2018, and, (xi) *M.C. Agrawal HUF Vs. Sahara India* (2011) 183 DLT 105 that judicial notice can be taken by the courts of the prevalent rents. The premises are situated in the prime residential cum commercial locality of Azadpur and the rates of rent prevalent wherein for the period for which damages have been awarded, far exceed the rate at which damages/mesne profits have been awarded. Option has still been given to the counsel for the petitioners, that the proceedings for determination of mesne profits can be remanded, with liberty to the Estate

Officer to assess the damages at a rate more than claimed and as also permissible in law as held in *Delhi Jal Board Vs. Ram Singh* 2018 SCC OnLine Del 10086, but the counsel for the petitioners does not consent thereto. It is quite obvious that a challenge to the rate of damages has been made without being prepared to lead evidence, of the contemporaneous rent of letting in the locality being less or without being prepared to face an order for higher rate if determined after taking evidence of contemporaneous/prevalent rates of letting in the locality. There is thus no material challenge to the impugned order qua the assessment of damages.

34. There is no merit in the petition.

Dismissed.

AUGUST 27, 2018
SR..

RAJIV SAHAI ENDLAW, J.