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

+ CM(M) 514/2018 & CM Nos. 18148-49/2018

SANJAY KUMAR & ORS

..... Petitioners

Through: Mr. Aditya Aggarwal, Ms. Samia
Malik & Mr. Ankit, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR

..... Respondents

Through: Ms. Prabhsahay Kaur, Adv. for
North DMC.
Ms. Anita Vaid, Assistant
Commissioner Land & Estate, North
DMC.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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03.05.2018

1. The petitioners are occupants of premises which are described as servant quarters in property generally known as 10, Rajpur Road, Civil Lines, Delhi-110054. It is not in dispute that the said property belongs to North Delhi Municipal Corporation (North DMC), the first respondent herein. It is also not in dispute that the property comprises of residential quarters meant to be allotted for use as residence by municipal officials, the premises occupied by these petitioners, apparently being servant quarters attached to such officers' accommodation. The petitioners claim to have been in use and occupation of such premises for more than 65 years.

2. It appears that on 30.08.2013, Assistant Commissioner, Land and Estate department of North DMC had issued notices, statedly on the basis of a survey conducted, calling upon each of these petitioners to show cause as to why they be not made to vacate and charged damages, their presence in the premises having been described as unauthorised occupation. The said action gave rise to civil suit (suit no. 330/2014) being filed with the prayer for relief in the nature of injunction against dispossession. The petitioners had also moved an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) in the said civil suit. The prayer in the said application, however, was declined by the trial court. The petitioners challenged the said decision by appeal (MCA 4/2015) before the court of additional district judge. By order dated 26.03.2015, the first appellate court granted the interim injunction, as prayed, and directed the respondent corporation to restrain itself from “*demolishing the suit properties without due process of law during the pendency of the suit*”. The copy of the plaint of the said suit (suit no. 330/2014) has not been shared with the Court and it is not understood as to how occasion had arisen against the backdrop of show cause notice dated 30.08.2013 to allege that the North DMC was contemplating demolition action rather than eviction as was indicated in the processes.

3. Be that as it may, it is an admitted position of the petitioners that they withdrew the above said suit which came to be disposed of accordingly. It is sought to be explained that advice for withdrawal of suit had been given in the wake of submissions made by the counsel representing the North DMC to the effect that no action for demolition was contemplated and further that no such (demolition) action would be carried out qua the subject property

except in accordance with due process of law. Copy of the order dated 28.07.2017 whereby the said suit (apparently renumbered as CS No. 1405/2016) was dismissed as withdrawn has been submitted and it indicates that the trial court had clarified in the penultimate para that disposal of the suit would not prejudice the power of North DMC to take action against subject property as per provisions of North Delhi Municipal Corporation Act, 1957 and other building bye laws.

4. On 07.09.2017, the Assistant Commissioner, Land and Estate of North DMC issued fresh show cause notices to the petitioners calling upon each of them to explain within seven days as to why the premises be not got vacated *“from unauthorised occupancy and damages for unauthorised occupancy be not recovered as per rules”* and further as to why *“eviction action be not initiated”* against them.

5. It is admitted position for the petitioners that having been served with the show cause notices on 07.09.2017, they submitted replies before the Assistant Commissioner, Land & Estate. It is stated that personal hearing was also afforded to the petitioners by the said authority i.e. Assistant Commissioner, Land & Estate who eventually passed orders described as *“final vacation notice”* on 23.11.2017, the concluding portion whereof would read thus:-

“NOW THEREFORE, your occupation at above servant quarter is held as unauthorized and as such, you are hereby directed to vacate the aforesaid servant quarter under your occupation within 15 days from the issue of this final notice failing which forceful eviction occupation will be initiated against you and the quarter will be got vacated without any further intimation”.

6. The petitioners have filed a fresh suit, in the wake of the aforementioned show cause notices and final vacation notices, seeking primarily the following relief:-

“ a. Grant a decree of permanent injunction by declaring the notices i.e. (i) Notice dated 30.08.2013 (No Accom./L&E/2013-14/4867) (ii) Notice dated 07.09.2017 (No. Suptd.(Allot)/L&E/2017/D-735) and (iii) Notices dated 23.11.2017 (No. Suptd.(Allot)/L&E/2017/D-984) are not in consonance with law and no proper procedure has been followed while issuing them and thereby, declaring the same as null and void and further thereby restraining the defendants from evicting/dispossessing the plaintiffs from the suit premises as mentioned in schedule (i.e. Mentioned in paragraph no. 3) without following the due procedure of law”.

7. The civil suit (CS No. 3704/2017) was submitted with application under Order XXXIX Rules 1 and 2 CPC which was dismissed by the additional senior civil judge by his order dated 19.12.2017. The said order was challenged unsuccessfully before the court of additional district judge by appeal (MCA 14/2017) which has been dismissed by order dated 27.04.2018, the correctness, legality and propriety whereof is sought to be assailed by the petition at hand.

8. The respondents have appeared, on advance copy, through counsel. During the course of hearing, need arose and consequently the Assistant Commissioner Land & Estate who had issued the impugned notices for show cause and also passed the final vacation notices, has also appeared in person. Midway the hearing, the counsel for the respondents sought deferment so that she could seek further instructions from North DMC. In the resumed hearing, the learned counsel representing the respondents submits that she has received further instructions in the matter, the same

being that the impugned final vacation notices would not be pressed or pursued for any further action insofar as thereby the petitioners have been informed that in case of default on their part in vacation of the subject premises within the period specified “*forceful eviction occupation will be initiated against them and the quarter will be got vacated without any further intimation*”. The learned counsel appearing for the respondent submits that she has been instructed to inform the Court that North DMC intends to follow the procedure prescribed by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and, for such purposes refer the matter to the Estate Officer to secure order of eviction as also order for recovery of damages in respect of each of the premises in question. The learned counsel submitted that for so pursuing the matter respecting the subject premises against the petitioners, North DMC seeks time of two weeks and undertakes that no forcible eviction action shall be undertaken pursuant to final vacation notices dated 23.11.2017.

9. The learned counsel for the petitioners fairly concedes that in view of the above submissions and undertaking by the respondents, the civil suit in which the impugned orders were passed would be rendered infructuous. He submitted an undertaking that the petitioners would withdraw the said suit by making appropriate submissions before the trial court within a week hereof.

10. The counsel for the respondent submitted that given the previous proceedings and the litigation, it is apprehended that effort would be made by the petitioners to cause delay to the proceedings which are intended to be taken out before the Estate Officer under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The counsel for the

petitioners submitted that the petitioners undertake to cooperate with the proceedings before the estate officer and not seek any unnecessary adjournments and ensure that such proceedings reach a logical conclusion expeditiously.

11. Binding all the parties with their respective undertakings, as recorded above, these proceedings are closed.

12. Copy of the order *dasti* to all sides.

R.K.GAUBA, J

MAY 03, 2018

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