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

% *Date of Order: 13.11.2018*

+ **CM (M) No.1350/2018 & CM No.46340/2018**

RAMA KANT SHAH

..... Petitioner

Through: Mr.J.C. Mahindro, Advocate
with Mr.Shubham Agarwal,
Advocate.

versus

SHASHI BALA NAGPAL

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

1. The impugned orders dated 17.08.2018 and 06.09.2018 passed by the court of learned Civil Judge-06, Central District, Tis Hazari Courts, Delhi ('Trial Court') in Execution Petition No. 228/2017, are the subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

2. With the permission of the Court, the learned counsel for the petitioner has placed on record a copy of the judgment dated 19.03.2014 in Civil Suit No. 454/2006 which was decreed in favour of the respondent/Decree-Holder/plaintiff against the petitioner/judgment debtor/defendant for possession, permanent injunction, mesne profit/damages with regard to the property in question bearing No. R-54, Gopal Park, Model Town, Delhi. The execution of judgment and

decree dated 19.03.2014 has been sought by the respondent against the petitioner.

3. The respondent filed the said suit against the petitioner, claiming herself to be the owner and the petitioner a trespasser. The petitioner had taken the defence in his written statement that the suit property was acquired by the Government and the plot was deserted by the landlord and taking advantage of the situation Sh. Ajit Singh (PW3) and Sh. Satya Pal Singh (PW2) handed over the said plot to him on tenancy and they were collecting rent from him. He also pleaded that notifications under Section 4 and 6 of the Land Acquisition Act, 2013 were issued on 19.08.1992 and 16.08.1996 respectively for acquiring the said land and the award was passed on 14.08.1995. He also pleaded that the possession of the property was taken by the government after it demolished the properties and constructed the road. He pleaded that some portion of the plot was left out after construction of the road between the Outer Ring Road and Azadpur and he started residing in the said plot by constructing a temporary structure using some old bricks and obtained electricity connection. The respondent had examined Sh. Satya Pal Singh (PW2) and Ajit Singh (PW3), who categorically denied having given the said property on rent to the petitioner or having any concern with the suit property. The 'Trial Court' decided the issue no. 4 "*Whether the defendant is in possession of the suit premises as a tenant under the landlordship of Satya Pal and Ranjeet Singh? OPD*" against the petitioner. While deciding issue no.6 as to "*Whether the defendant is*

a trespasser in the suit property? OPP”, the ‘Trial Court’ noticed that the defendant has not cross-examined PW2 and PW3. The ‘Trial Court’ found that the petitioner has failed to substantiate his claim that he was a tenant in the suit property. The ‘Trial Court’ found the petitioner to be a trespasser in the suit property. The ‘Trial Court’ noticed that even otherwise, in his cross-examination recorded on 23.08.2013, the petitioner has categorically admitted that the respondent was the owner of the suit property and that he (petitioner) was a trespasser. In light of the aforesaid, issue no. 6 was decided against the petitioner and in favour of the respondent. While deciding issue no. 8 *‘Whether the plaintiff is entitled to relief prayed for? OPP’*. The ‘Trial Court’ found that the physical possession of the suit property was not obtained by the government till date.

4. In the execution of the said decree dated 19.03.2014, the petitioner has filed objections that the Judgment Debtor after failing to get any relief from the Courts had vacated/left the said space and had occupied the adjoining government land with which the Decree-Holder has no concern or connection by constructing his fresh *Jhuggi*. He further pleaded that *“taking the advantage of the space left near the Azadpur Flyover, the Judgment Debtor has constructed a fresh Jhuggi with which the Decree Holder has no concern or connection”*. He also pleaded that *“in view of the aforesaid the Decree of the Decree-Holder stands fully satisfied and the Decree-Holder cannot stake claim on the site where a fresh Jhuggi has been constructed by the Judgment Debtor”*.

5. The petitioner has nowhere mentioned in his objection as to when he vacated the property in question. He has not filed any receipt of handing over the possession to the Decree-Holder. It appears that to prolong his unauthorized and illegal occupation of the property in question he has very conveniently pleaded that after vacating the property in question he had occupied the adjoining government land with which the Decree Holder has no concern. The respondent filed the suit in the year 2006, which was decreed on 19.03.2014 and despite filing the execution the respondent has not received the fruits of the decree due to false and frivolous objections taken by the petitioner.

6. I do not find any infirmity or illegality in the impugned order. There is no merit in the petition. The petition and application, being CM No.46340/2018, are dismissed accordingly with no order as to costs.

VINOD GOEL, J.

NOVEMBER 13, 2018

“shailendra”