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

+ **W.P.(C) 7799/2016**

PUSHPA GUPTA AND ANR

..... Petitioners

Through Mr P.N. Dhar, Advocate.

versus

NATIONAL CAPITAL TERRITORY OF  
DELHI AND ANR

..... Respondents

Through Ms Jyoti Taneja, Advocate for  
GNCTD R1 and R2.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**15.04.2019**

1. The petitioners have filed the present petition, *inter alia*, praying as under:-

“To pass an appropriate writ, order and mandamus thereby directing the respondents to open the seal affixed by the respondent no.2 in premises no.S-12 old no.1585/24-a, Naveen Shahdara, Delhi and to restore the possession of the first floor of the said premises to the petitioners.”

2. The petitioners claim that Late Sh Vishwanath Gupta – the husband of petitioner no. 1 and father of petitioner no.2 – they had taken the premises, namely, the first floor of the premises bearing No. S-12 (Old No. 1585/24-a) Naveen Shahdara, Delhi on rent from Sh Ramesh Bhalla on 01.12.1996. The petitioners have produced a copy of a rent receipt-cum-agreement dated 01.12.1996, indicating that the rent was agreed at

₹2,000/- per month and the term of the tenancy was agreed as a maximum of two years. It was further stipulated that the same could be terminated by either party by giving one month's prior notice.

3. Sometime in the year 1998-99 Sh Ramesh Bhalla sold the property in question to Sh Jai Gopal Khera (since deceased). Late Sh Jai Gopal Khera came to occupy the ground floor of the said property.

4. Sh Jai Gopal Khera expired intestate on 03.06.2012.

5. The electricity connection to the premises in question was common as the petitioners claim that the electricity was being supplied to the first floor by a sub-meter.

6. After the demise of Late Sh Jai Gopal Khera, Sh. Vishwanath Gupta (the husband of petitioner no.1 and father of petitioner no.2) filed a civil suit being Civil Suit No. 502/2012 captioned "Vishwanath Gupta v. BSES" seeking permanent injunction restraining the BSES from disconnecting the electricity to the premises in question. On 01.12.2012, an order was passed in the said suit directing the BSES not to cut electricity supply to the petitioner therein and to raise bills on average basis.

7. It appears that during the said proceedings notices were issued by the concerned court to respondent no. 2 (SDM, Shahdara) to ascertain the legal heirs of the Late Jai Gopal Khera and, in compliance of the said order, the concerned Tehsildar had submitted reports indicating that Sh Khera had not left behind any heirs. Admittedly, no person had come to claim his body as well. In the aforesaid circumstances, the Court issued orders for respondents to take possession of the premises in question under the provisions of Section 29 of the Hindu Succession Act, 1956.

8. In compliance with the aforesaid orders, respondent no. 2 issued a notice dated 28.04.2015, informing the petitioners that the property in question had devolved upon the Government and the petitioners were given one month's time to vacate the premises and comply with the orders. The petitioners were also called upon to appear before respondent no.2 with all relevant documents related to the property.

9. The petitioners responded to the said notice, *inter alia*, contending that in terms of Section 29 of the Hindu Succession Act, 1956, respondent no.2 could take possession of the property subject to all liabilities and obligations. It was contended that respondent no.2 had stepped into the shoes of the original owner and that would imply that the respondent would also have to accept the petitioners as the tenants of the said premises.

10. The petitioners were once again issued a notice dated 24.09.2015 to vacate the premises, failing which, eviction proceedings would be initiated against the petitioners.

11. The petitioners responded to the aforesaid notice reiterating their contentions. Thereafter, the petitioners were issued a notice dated 30.09.2015 whereby the petitioners were called upon to produce the lease agreement with late Sh Jai Gopal Khera as well as records of payment of rent of any kind. Admittedly, the petitioners could not produce any receipt or any lease agreement with late Sh Jai Gopal Khera. Subsequently, an eviction order was passed and respondent no.2 took possession of the property in question on 16.05.2016.

12. Prior to the same, the petitioners had filed another suit (CS NO. 105022/2015 captioned Pushpa Gupta & Anr. v. SDM Shahdara), *inter*

*alia*, praying for an injunction restraining the respondents from taking possession of the said property. In the said suit, the petitioners filed an application seeking stay of the “Final Eviction Order” dated 12.05.2016. However, the said application was disposed of on 16.05.2016, on the ground that the application had become infructuous. The learned counsel for the petitioners also informs this court that the suit was subsequently dismissed.

13. It is relevant to note that respondent no.2 had contested the proceedings filed by the petitioners on the ground that the petitioners had no right or title in the said property. Although the petitioners are continuing to enjoy the possession of the suit property, they had neither deposited the rent with the Government nor produced any material to show that they had been paying rent to the owners/landlords. The observations made by the Learned ASCJ in the order dated 16.05.2016 in this regard are relevant and are set out below:

“In view of the whole facts and circumstances of the present matter, the background of the case is to be taken into account. The present suit is filed by the plaintiffs whereby asking for declaring the eviction order of SDM dated plaintiffs are the legal heirs of the original tenant namely, Vishwanath Gupta with whom the landlord/admitted owner of the property entered into an agreement of tenancy and after the death of the landlord on 03.06.2012. The suit property devolved upon the Government of NCT of Delhi and in this regard, for taking over the property in question, the concerned SDM issued the Final Eviction Order on 20.10.2015 but the plaintiffs failed to evict the suit property even after service of a number of show cause notices’ and reminders of the same. This very fact has been admitted

on behalf of the plaintiffs in the contents of the plaint itself.

Now we can also discuss the legal right of the plaintiff for the interim relief asked in the present application. The defendant/SDM has already issued Eviction Order for taking over the suit property from the possession of the plaintiffs and as the plaintiffs are not having any legal right either with respect to the tenancy in the premises as admittedly the SDM has not accepted them a tenant and also the plaintiffs have nothing to do with respect to the ownership rights of the property.

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In addition, this is also to be considered that neither the plaintiffs are giving rent to anyone in the absence of the real owner/landlord of the same, nor they are complying the order of SDM who is the representative of the government as the property vests in the Government of NCT of Delhi and in this manner, the plaintiffs are enjoying the possession of the suit property without any type of legal right with respect to the same.”

14. This Court had pointedly asked the learned counsel for the petitioners whether there was any material available with the petitioners to show that they had been paying any rent to late Sh Jai Gopal Khera. In response to this query, the learned counsel submitted that although rent was being paid regularly, the same was paid in cash and no receipt/documents are available with the petitioners to evidence the same. Thus, apart from the receipt of ₹5000/- paid as security deposit in 1996 (receipt-cum-agreement entered into with Sh Ramesh Bhalla in the year 1996) there is no document available with the petitioners that would even remotely suggest that the petitioners had been paying any rent to the

landlords/owners. The contention that the petitioners had been paying rent cannot be accepted.

15. In view of the above, it is apparent that the petitioners had been continuing to occupy the premises in question without any legal right.

16. In light of the aforesaid facts, this Court does not consider it apposite to examine the question of law involved in the present petition, i.e. whether respondent no. 2 could have evicted the petitioners without filing a suit or initiating any other proceedings. It is well settled that proceedings under Article 226 of the Constitution of India are discretionary and, given the facts of this case, this Court does not consider it apposite to exercise such discretion.

17. The petition is, accordingly, dismissed.

**VIBHU BAKHRU, J**

**APRIL 15, 2019**

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