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

Date of Decision: 08.02.2021

+ CM(M) 97/2021

ANAMI DASS

..... Petitioner

Through Mr.Manohar Lal, Adv.

versus

GAON SABHA CHHAWLA & ANR.

..... Respondents

Through Ms.Sangita Rai, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

This hearing has been held by video conferencing.

CMs 4272-4273/2021(exemption)

Allowed, subject to all just exceptions.

CM(M) 97/2021 & CM 4274/2021

1. This petition has been filed by the petitioner challenging the order dated 22.12.2020 passed by the learned Principal District & Sessions Judge (South-West), Dwarka Courts in Appeal, being MCA No.07/2020, dismissing the said appeal with cost of Rs.25,000/-.

2. The appeal had been filed by the petitioner herein challenging the order dated 17.03.2020 passed by the learned Senior Civil Judge (South-West) District in Suit, being CS SCJ No.277/2020, dismissing the application of the petitioner herein filed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908.

3. The learned counsel for the petitioner submits that the Impugned Order is liable to be set aside inasmuch as it wrongly observes that the appeal filed by the petitioner is not maintainable as the application of the petitioner under Order XXXIX Rule 1 and 2 of the CPC is still pending adjudication before the learned Senior Civil Judge. Drawing reference to the order dated 17.03.2020 passed by the learned Senior Civil Judge, the learned counsel for the petitioner submits that by the said order, the application filed by the petitioner had been dismissed by the learned Trial Court.

4. The learned counsel for the petitioner further submits that the cost of Rs.25,000/- has been imposed on the petitioner invoking Section 35A of the CPC, which on the face of it, is incorrect.

5. On merit of the case, the learned counsel for the petitioner submits that the respondent no.1 in its written statement filed before the learned Trial Court has admitted that a notification under Section 507 of the Delhi Municipal Corporation Act, 1957 has been issued for the said area, declaring it to be urban. He submits that on issuance of the said notification, the only remedy of the petitioner is in the form of a Civil Suit, which it had filed. He submits that the petitioner had a

good *prima facie* case inasmuch as the possession of the land in question was with the petitioner.

6. I have considered the submissions made by the learned counsel for the petitioner. As far as the merit of the claim raised by the petitioner, it is to be noted that this Court is not sitting as an Appellate Court against the challenge to the Impugned Order. Even otherwise, I find no infirmity in the order passed by the learned Trial Court or the learned Appellate Court. The learned Trial Court in its order dated 17.03.2020, while dismissing the application of the petitioner filed under Order XXXIX Rule 1 and 2 of the CPC, has observed as under:

"I have perused the record. Apart from the above facts as mentioned by the ld counsel, the plaintiff has mentioned in his plaint that the plaintiff had moved an application for declaration of bhumidhar before the Ld. Revenue Assistant but the application was dismissed on 14.01.1998. The appeal against this order was also dismissed. Thereafter, even the revision petition was dismissed on 25.01.2020. The plaintiff filed a petition before the Hon'ble High Court, wherein, it was directed that the application of the plaintiff shall be disposed off afresh. However, on 19.06.2006, the Ld. Revenue Assistant again dismissed the application of the plaintiff on the ground that he had not deposited the lease money and that there was no valid allotment in his favour. As per the plaintiff's case, the appeal is pending for 06.04.2020. The plaintiff also mentions that ejection proceedings were initiated against him on 16.03.2016. An appeal against this order is also pending.

However, the plaintiff has not placed on record any record to show that the said appeal is pending. As per the plaintiff's own documents, an eviction order has been passed against him. His application for declaration of bhumidhari rights in his favour has been dismissed. Hence, from the record it seems that the eviction proceedings are being carried out as

per law. Hence, there is no prima facie case in the favour of the plaintiff at this stage. Hence, the court is not inclined to pass any such order in the favour of the plaintiff, at this stage. Hence, application is dismissed."

7. The learned Appellate Court in its Impugned Order has also rightly observed as under:

"10. The first & foremost requirement for the relief under the provisions of Order 39 Rule 1 & 2 CPC is for the plaintiff to establish prima facie case. In the instant case, appellant's best case is that he was handed over possession of the suit property in 1985 on a five year lease under the twenty point program of the Government of India, as a landless person of the village. Subsequent to conclusion of that five year lease, there is no document to authorise his continuity and possession. Institution of various proceedings before the Revenue Court and now before the Civil Court only on the basis of that five year lease, almost after thirty years of the conclusion of that lease is an attempt by the appellant to usurp the Government land. His conduct is blatant total misuse and exploitation of the social beneficial programs of the Government. He already stands evicted from the suit property by the orders of the competent court. His application seeking declaration of Bhoomidari rights under the DLR Act stand dismissed by the Revenue Assistant, vide order dated 19.06.2006. His application seeking recording of his name in the revenue records stands dismissed by Tehsildar, Kapashera, vide order dated 26.02.2019. The appellant, in view of the orders passed by the various Revenue Courts, has no right, title or interest in the suit property. His claim of being in physical possession of the suit land inspite of eviction orders by competent Courts makes his conduct to be totally inequitable. Therefore, there is no equity or prima facie case in favour of the appellant. Appellant is a dishonest litigant, who is continuing to claim possession over Government land by invoking the jurisdiction of various forums.

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11.2 This court is of the opinion that once the appellant has invoked the jurisdiction of Revenue Courts, he has to take those proceedings to the logical end and seek relief, if any, in those proceedings. He cannot be permitted to jump the wagon and invoke parallel proceedings in civil courts. Having already failed to establish his authorized continuing possession over the suit land before the Revenue Courts, appellant has now tried to invoke the jurisdiction of Civil Court."

8. As far as the submission of the learned counsel for the petitioner relying upon the notification under Section 507 of the DMC Act is concerned, in view of the orders passed by the Revenue Authorities and taken note of by the learned Trial Court and the learned Appellate Court, it has been rightly concluded that the petitioner was not entitled to any interim protection in the suit.

9. Though it may be correct that the learned Appellate Court has wrongly observed that the application filed by the petitioner under Order XXXIX Rule 1 and 2 CPC is pending adjudication before the learned Civil Court, this in my opinion will not make any difference as far as the present petition is concerned. The claim of the petitioner has also been considered on merit by the learned Appellate Court in spite of the above observation. The case of the petitioner having been considered on merit, the Impugned Order cannot be faulted only because of the said observation.

10. As far as the cost is concerned, in the facts of the case, the cost imposed is not found to be unjustified or unreasonable warranting any interference from this Court.

11. I, therefore, find no merit in the present petition. The same is dismissed.

12. It is reiterated that any observation made by the learned Trial Court, the learned Appellate Court, or this Court in the present order, shall not be binding on the learned Trial Court or influence it while adjudicating the suit filed by the petitioner.

FEBRUARY 8, 2021
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NAVIN CHAWLA, J