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

% Judgment delivered on: 10.04.2023

+ CM(M) 1089/2022 & CM APPL. 46063-64/2022

RAMKISHAN DECEASED THROUGH LRS AND ANR

..... Petitioner

versus

MANISH KUMAR & ANR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Parveen Kumar, petitioner in person

For the Respondent : Mr. Manish Tanwar, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 13.04.2021 passed in CS No. 759/2018 titled *Manish Kumar vs. Ram Kishan & Anr.*, whereby the application under Order XIV Rule 5 of CPC, 1908 filed by the respondent/plaintiff seeking deletion of issues no.1 and 2 was allowed.

2. Learned counsel appearing for the petitioner/defendant nos.1 and 2 submits that the issue regarding whether the suit property falls within the jurisdiction of Delhi Cantonment Board was taken right uptill the Hon'ble Supreme Court in SLP(C) No. 8866/2020 whereby after hearing the parties, the Hon'ble Supreme Court had held that the

petitioner had accepted the jurisdiction of Delhi Cantonment Board over the land in question and it was on that basis, that the learned Trial Court had considered that issue no.1 was not required to be adjudicated.

3. Learned counsel submits that so far as issue no. 2, as to whether the provisions of Section 250 of Cantonments Act, 2006 (hereinafter as “the Act”) would bar the suit as filed by the respondent/plaintiff is concerned, the learned Trial Court committed an error in not considering the correct interpretation of Section 250 of the Act.

4. Learned counsel further submits that the plain reading of Section 250 of the Act leaves no room for any ambiguity, in that, the bar is absolute and no Civil Court can entertain any suit other than the proceedings in respect whereof the appellate authority under the Cantonment Act has the exclusive jurisdiction.

5. Learned counsel further submits that the learned Trial Court overlooked the plain interpretation of Section 250 of the Act and concluded that it is only if a person who is affected by any order or notice contained in Section 250 of the Act, that the suit or application by such person would be barred. Learned counsel submits that the said interpretation is erroneous and is not correct in view of the language contained in Section 250 of the Act.

6. Learned counsel also submits that the issue regarding constructions made by the petitioner on the said suit property is pending adjudication before this Court in writ jurisdiction whereby the petitioner had challenged the three deficiencies raised by the Cantonment Board in respect of the subject property. On that basis, learned counsel submits that having regard to the fact that the matter is pending before this

Court, the learned Trial Court could not have concluded that no action under Section 250 of the Act has been appealed against by the petitioner.

7. Learned counsel submits that, even if an appeal under Section 340 of the Act in strict sense is not preferred, the challenge in the writ petition should be deemed as if there is a proceeding against the notice issued by the Cantonment Board, and constructed as such, the bar under Section 250 would be available to the petitioner/defendant to resist the suit of the respondent/plaintiff.

8. *Per Contra*, learned counsel for the respondent/plaintiff submits that the words employed in Section 250 of the Act are clear and brook no other interpretation. Learned counsel submits that once the petitioner has accepted that the subject suit property is covered by the jurisdiction of Delhi Cantonment Board, coupled with the fact that there is no notice or order issued against the respondent/plaintiff, there is no bar which can be raised against the suit filed by the respondent on the basis of Section 250 of the Act.

9. Learned counsel submits that only in case any order or notice was issued against the respondent/plaintiff, then alone it could be possible that the bar under Section 250 of the Act may have been raised as an issue by the petitioner/defendant.

10. Learned counsel submits that since no notice or any order has been issued against the respondent/petitioner, the question of his suit being barred under provisions of Section 250 of the Act does not arise. On that basis, learned counsel submits that the learned Trial Court has given the correct interpretation to the provisions of Section 250 of the

Act and does not require interference by this Court.

11. This Court has considered the rival submissions as also perused the impugned order.

12. It would be apposite to extract the Section 250 of Cantonment Act, 2006 as under:-

“250. Courts not to entertain proceedings in certain cases.—(1) After the commencement of this Act, no court shall entertain any suit, application or other proceedings in respect of any order or notice unless an appeal under section 340 is preferred and the same is disposed of by the appellate authority under sub-section (3) of section 343 of this Act.

(2) Notwithstanding anything contained in sub-section (1), every suit, application or other proceedings pending in any court immediately before the commencement of this Act shall continue to be dealt with and disposed off by that court as if the said section has not been brought into force.”

13. The settled law of the land is that whenever an interpretation of the statute or an enactment is to be considered, the first principle to be applied is to read the same in a plain language and unless there is some ambiguity, the external aids required to interpret the said provisions may not be employed.

14. The plain reading of the provisions of Section 250 of the Act brings to fore the fact that the bar would be applicable only if any suit or application or other proceedings has been filed in respect of “any order or notice” issued to any person falling within the jurisdiction of the said Act. The distinction is clearly brought out from the words “in respect of any order or notice” which relates to the person against whom any such

order or notice has been issued by the Cantonment Board under any of the provisions in the Delhi Cantonment Act, 2006.

15. It is an admitted case of the petitioner that no notice or order under the Act has been issued against the respondent/plaintiff. It is also undisputed that the respondent/plaintiff has not filed any appeal under Section 340 of the Act.

16. In the considered opinion of this Court, the provisions of Section 250 of the Act are not applicable in the present case and the learned Trial Court by way of the impugned order has rightly deleted the issue no.2.

17. The petitioner has also challenged the order dated 24.09.2022 whereby the learned Trial Court has refused to take the evidence by way of affidavit of DW-1 Praveen Kumar on the basis that in spite of repeated directions, the affidavit of evidence still contained reference to the issues which were deleted.

18. In view of the aforesaid findings, this Court is of the considered opinion that the petitioner/defendant cannot be deprived of a right to defend his own case.

19. The petitioner/defendant is permitted to place on record evidence by way of an affidavit of DW-1 Parveen Kumar, strictly keeping in view the aforesaid deletion as also keeping in view the facts pleaded, forming part of the learned Trial Court record.

20. The petitioner is directed to file the evidence of DW-1 within one week from today with an advance copy to the respondent/plaintiff.

21. The learned Trial Court shall take on record the said evidence and proceed in accordance with law.

22. In view of the above directions, the petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

APRIL 10, 2023

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