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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 16348/2022 with CM APPLs. 51296-97/2022

M/S MOORA MAL LEKH RAJ

..... Petitioner

Through: Dr. Sarbjit Sharma with
Ms. Jhanvi, Advocates with
petitioner in person.
(M: 9810009104, Email:
drsarbjitsharma@gmail.com)

versus

THE ESTATE OFFICER & ANR.

..... Respondents

Through: Ms. Nidhi Raman, CGSC with
Mr. Tarveen Singh, GP for R-1
& 2/DOI (M: 9891088658)

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W.P.(C) 16376/2022 with CM APPLs. 51395-96/2022

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CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

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J U D G M E N T

10.04.2023

MINI PUSHKARNA, J.

1. The present writ petitions have been filed seeking directions inter alia for quashing/ setting aside the common judgment dated 05.11.2022 passed by the learned Principal District and Sessions

Judge, New Delhi, Patiala House Courts dismissing the appeals of the petitioner against the common order dated 01.06.2022 passed by the Estate Officer in PPA No. 11/2022 and PPA No. 12/2022. By way of the order dated 01.06.2022, the learned Estate Officer had passed an eviction order under Section 5(1) and (2) of the Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 ('PP Act'), besides imposing damages to the tune of Rs.2,99,77,090/- for wrongful occupation of the Public Premises under Section 7 of the PP Act.

2. Briefly stated, the case of the petitioner is that late Sh. Moora Mal and his son late Sh. Ishar Dass migrated as displaced persons from Pakistan at the time of partition of India. Temporary tenements were raised by the Government in 1947 and Late Sh. Moora Mal started running the business of fuel and coal depot on a piece of land under the name and style 'M/s Moora Mal Lekh Raj' ('the firm'). License dated 14.05.1963 was issued to run a fuel and coal depot to the firm under the Delhi Coal Control Order, 1963.

3. After the death of Moora Mal, his son Ishar Dass continued with the business on land near CPWD Enquiry Office, Mahadev Road, New Delhi.

4. This was subsequently shifted to Fuel Depot, Chambery No. 3, near Gole Dak Khana, New Delhi, which is the site in question. Fuel Depot was run from the site in question. In this regard, certificate dated 17.01.1966 was issued by New Delhi Municipal Council (NDMC) regarding *tehbazari* fees being charged from the firm.

5. It is the case of the petitioner that there was another migrant namely, Sardar Thakur Singh, who had been continuing business

along with Ishar Dass. Since Sardar Thakur Singh and Sh. Ishar Dass were old friends, they continued to run business from the premises in question.

6. Proceedings under Section 7(2) of PP Act were initiated against the petitioner by the Land and Development Office ('L&DO') for payment of damages for the period from 01.01.1959 to 30.10.1965 on the ground of unauthorised occupation of the public premises in question. The same were opposed by late Sh. Ishar Dass on the ground that he was not an unauthorised occupant and that he had been paying *tehbazari* to NDMC.

7. On examination of record, it came to the fore that late Sh. Ishar Dass was paying *tehbazari* to NDMC, which was recovered by NDMC upto 31.03.1969. The matter was considered in consultation with the Ministry and it was decided to allot the site in question to the squatter on temporary basis. Accordingly, an offer to this effect was made to late Sh. Ishar Dass vide letter dated 05.08.1967, followed by reminders dated 05.06.1970 and 25.01.1973. Since Sh. Ishar Dass failed to comply with the terms and conditions of the temporary allotment, the same was withdrawn and cancelled vide letter dated 09.03.1973, and his occupation upon the said land was treated as unauthorised.

8. Subsequently, his representations received in this regard were also duly considered, which were not found satisfactory. Thus, it was decided to take action for eviction and recovery of damages. Accordingly, case for eviction and recovery of damage charges for the period from 01.01.1959 to 14.07.1973 was filed in the Court of the

Estate Officer, but the same was withdrawn for revision of charges. Finally, fresh case was filed in the Court of Estate Officer under the PP Act for eviction and recovery of damages for the period from 01.01.1959 to 30.06.1982. A demand letter for damage charges for further period from 01.07.1982 to 31.03.1987 was also issued to late Sh. Ishar Dass on 13.11.1987.

9. Late Sh. Ishar Dass vide his reply dated 19.07.1985 to the Show Cause Notice issued by the Estate Officer took the plea for the first time that he was a displaced person and was covered under the Gadgil Assurance Scheme of the Government of India. The Estate Officer after examining all the issues raised by late Sh. Ishar Dass, vide order dated 28.08.1992 held that the firm was in unauthorised occupation of the public land for commercial purposes. It was further held that the Gadgil Assurance Scheme was not applicable to the firm, since the same applied to the premises that were being put to use for residential purposes.

10. Being aggrieved by the aforesaid order, late Sh. Ishar Dass filed a writ petition, *CWP No. 332/1993*, titled *Shri Ishar Dass Vs. Union of India and Anr.* The said writ petition was admitted vide order dated 01.02.1994. During the pendency of the said petition, one Narender Kumar, son of Sh. Chotto Ram Gupta moved an application for impleadment/ substitution of his name in place of Sh. Ishar Dass in the year 2010 on the ground that Ishar Dass had expired long back in the year 1994 and that he came to know about the demise only at the end of June, 2009. It was contended that late Sh. Ishar Dass had executed series of documents in his favour so as to transfer the land

in question in his favour.

11. However, the said application for impleadment was dismissed by judgment dated 25.05.2011, vide which the said writ petition was also dismissed. In the said judgment, it was categorically held that the Gadgil Assurance covers only residential premises and not commercial premises. It was further noted in the said judgment dated 25.05.2011 in *CWP No. 332/1993* that the sole basis of the claim of late Sh. Ishar Dass before the Estate Officer was that he was entitled to allotment of an alternative site under the Gadgil Assurance. It was held that once the deceased petitioner i.e. late Sh. Ishar Dass himself was not entitled to allotment of an alternative site, therefore, the applicant who had claimed himself to be successor in interest based on some transferred documents, cannot have a better claim. It was further held that late Sh. Ishar Dass being a squatter himself had no right to transfer the Government land to a third person. The relevant paras from the said judgment are reproduced as below:

“6.Without commenting on the authenticity and the effect of execution of such documents, it would be suffice to say that admittedly the deceased was in unauthorized occupation of a Government land being a squatter. The sole basis of the claim of the deceased petitioner before the learned Estate Officer was that he was entitled to allotment of an alternative site under the Gadgil Assurance. The said plea of the deceased petitioner was negated by the learned Estate Officer vide order dated 28.02.1992 and which order was challenged by him before this court in the present petition. In a connected writ petition bearing W.P.(C) No. 3430/92 titled Randhir Kumar Sharma & Ors. vs.

Union of India decided on 18.03.2009, the Division Bench of this Court after placing reliance on the earlier decision of the Division Bench of this Court in Madan Lal Jain Vs. Union of India & Anr. (supra) reiterated the view that the Gadgil Assurance covers only residential squatters and not commercial squatters, that too in relation whereto an encroachment has been made by poor persons. It would be appropriate to reproduce the relevant para of the same as under:

*“7. It is observed that the Division Bench of this Court decided the very issue raised by the petitioners in the present writ petitions. The Division Bench held that the Gadgil Assurance would not curtail the jurisdiction of the Estate Officer who is a statutory authority under the said Act, as the statutory power can be curtailed or abridged or taken away only by reason of the provisions of statute and not otherwise. Further, it came to a conclusion that a bare perusal of the office memorandum dated 31st January 1969 referred to in the judgment of **Madan Lal Jain (Supra)** clearly shows that the Gadgil Assurance covers only residential areas in relation whereto an encroachment had been made by poor persons.*

8. We cannot but agree with the decision of the Division Bench in re: Madan Lal Jain (Supra). Thus, the submission of the petitioners that their unauthorized occupation for the purpose of carrying out their business was covered by the Gadgil Assurance is without any merit. In the circumstances, we are of the opinion that in a case of this nature this Court having regard to the larger public interest, would not exercise its discretionary jurisdiction under Article 226 of the

Constitution of India. The writ petitions are, therefore, dismissed without any order, however, as to costs.”

7. *Since the connected writ petition (W.P.(C) 3430/92) was dismissed by the learned Division Bench of this Court vide order dated 18.3.2009 and somehow the present petition got detached from the said petition therefore, the present petition remained pending. Since the issue is no more res integra, therefore this court cannot take any other view but to reiterate the view taken by the Hon'ble Division Bench of this court in **Randhir Kumar Sharma & Ors.vs. Union Of India (Supra)**.*

8. *As per the said legal position once the deceased petitioner himself was not entitled to allotment of an alternative site, therefore, the applicant who has claimed himself to be a successor in interest based on some transfer documents cannot have a better claim. Even otherwise the deceased petitioner being a squatter himself had no right to transfer the Government land in favour of the applicant.”*

12. Subsequently, proceedings were initiated by the L&DO under the PP Act and notice dated 07.03.2018 under Section 4 of the PP Act was issued by the Estate Officer, sent in the name of Sh. Ishar Dass through his legal heirs. The same was received by Sh. Gurcharan Singh, son of Sardar Thakur Singh, the petitioner herein, claiming to be transferee of the land in question. He filed reply dated 10.10.2018, followed by representation dated 13.02.2019. The proceedings before the Estate Officer kept pending owing to Covid-19 lockdown in the meanwhile. Ultimately, the Estate Officer vide order dated 01.06.2022 passed an eviction order against the petitioner under Section 5(1) and (2) of the PP Act and imposed damages upon the petitioner under

Section 7(2) and (2)(A) of the PP Act, directing the petitioner to pay a sum of Rs.2,99,77,090/- as damages on account of the unauthorised occupation of the premises, along with interest @18% per annum.

13. Against the aforesaid order dated 01.06.2022 passed by the learned Estate Officer, the petitioner herein filed two appeals being PPA No.11/2022 against the eviction order and PPA No.12/2022 against the imposition of damages. Both the aforesaid appeals came to be dismissed by the common impugned judgment dated 05.11.2022 passed by the learned Principal District and Sessions Judge, New Delhi, Patiala House Courts. Thus, the present two writ petitions came to be filed before this Court challenging the aforesaid common judgment dismissing the appeals of the petitioner.

14. On behalf of the petitioner, it is contended that the land in question as occupied by the petitioner was never acquired or requisitioned by the Government. Thus, the land never vested in the government and the government did not become owner of the land in question by virtue of Notification No. 775 dated 21.12.1911, as relied upon by the Estate Officer and the District Court.

15. It is contended that damages have been imposed upon the petitioner without determination of the same on the basis of any law, guidelines or rules. There has been no yardstick for evaluation of damages, thus, the order imposing damages is bad in law.

16. It is further contended that earlier notice dated 03.01.1966 was issued by the Estate Officer for imposition of damages for the period from 01.01.1959 to 31.10.1965. The said notice was never acted upon. There is no explanation as to why the damages were not imposed from

01.01.1959 to 30.06.1982 and for further period from 01.07.1982 to 31.03.1987. It is submitted that no reasons have been recorded for imposition of damages from 01.04.1987, if it was claimed that the petitioner firm was in unauthorised occupation from 1973.

17. It is further submitted that vide letter dated 28.05.1980, the office of Food and Supplies Officer allowed the Coal Depot of the petitioner for supply of soft coke with effect from 01.06.1980 and the same was linked with Fair Price Shop No. 4521 of M/s Manohar Lal Lakshmi Narayan at Bishamber Dass Marg, New Delhi. It is submitted on behalf of the petitioner that petitioner was earlier paying *tehbazari* and subsequently house tax till the year 2022 to the NDMC. Thus, he cannot be considered as unauthorised occupant.

18. On the other hand, on behalf of the respondent, it is submitted that the land occupied by the petitioner herein is government land. During the pendency of the present writ petitions, possession of the premises in question has already been taken over by the respondent on 16.12.2022.

19. It is submitted on behalf of respondent that as per record, the property was inspected by the technical section of the L&DO and it was found that the site in question was being misused as a commercial store in the name of Cream Bell Ice Creams and no Coal Depot was running at the site. The area under occupation of the petitioner was found to be 136 Sq. yards. Out of the said 136 Sq. yards, 12 yards was under the control of NDMC and 124 Sq. yards was under the control of L&DO. Thus, an updated demand letter for damage charges from 01.04.1987 to 14.07.2018 was issued on 07.03.2018.

20. It is further the contention on behalf of respondent that the site in question falls in the area where redevelopment work is being conducted by the Central Public Works Department (CPWD). It is submitted that the learned Estate Officer rightly passed the eviction order against the petitioner, which has been upheld by the District Court.

21. I have heard learned counsels for the parties and have perused the record.

22. It is manifest from the facts on record that late Sh. Ishar Dass along with his father late Sh. Moora Mal were running the business of coal from the land in question on the basis of *tehbazari* license. After the death of his father, late Sh. Ishar Dass continued to run the coal depot from the premises in question. However, his occupation was declared as unauthorised by the Ld. Estate Officer vide order dated 28.08.1992. His claim for alternate allotment under the Gadgil Assurance Scheme was also rejected by the Ld. Estate Officer by the aforesaid order dated 28.08.1992.

23. Late Sh. Ishar Dass expired in the year 1994. Subsequent claim as raised by Narender Kumar, son of Sh. Chotto Ram Gupta before this Court as transferee of late Sh. Ishar Dass was rejected by this Court by judgment dated 25.05.2011 in *W.P.(C) No. 332/1993*. In the said judgment, a categorical finding was returned that late Sh. Ishar Dass being a squatter himself had no right to transfer the Government land in favour of the said Narender Kumar. The present petitioner, Gurcharan Singh claims himself to be successor of Narender Kumar by way of GPA executed on 09.07.2009 and a Will in his favour.

When the occupation of late Sh. Ishar Dass was itself declared as unauthorised and he was held as not entitled to any alternative plot, the petitioner claiming his right through the said late Sh. Ishar Dass, has no right, title or interest over the land in question. The said claim of the petitioner has rightly been rejected by the Estate Officer, which finding was thereafter upheld by the District Court.

24. The finding against late Sh. Ishar Dass that he was in unauthorised occupation of public land and that his unauthorised occupation of public land for commercial purposes, does not come under the purview of Gadgil Assurance, has attained finality. The said finding as given by the Estate Officer by his order dated 28.08.1992 was upheld by this Court by way of judgment dated 25.05.2011 in *W.P.(C) 332/1993*. Thus, when the predecessor in interest of the petitioner has been held to be in an unauthorised occupation, the petitioner cannot claim any better title. The occupation by the petitioner remains as unauthorised, being in the nature of encroachment on public land.

25. The predecessor in interest of the petitioner sought allotment of alternative land under the Gadgil Assurance, which claim was rejected by this Court, as aforesaid. Late Sh. Ishar Dass claimed to have license over the land in question qua which NDMC admittedly recovered *tehbazari* fees upto 31.03.1969. Thus, fact remains that even the predecessor in interest of the petitioner, at best, claimed license over public land. Law in this regard is very clear that license does not confer any right, title or interest over the land in question. Thus, the petitioner herein cannot claim any title over the land in

question on the basis of an earlier *tehbazari* license that was conferred qua the land in question. Besides, no rights over any public land could have been transferred by late Sh. Ishar Dass in favour of any third person. Claim of the petitioner as a transferee from the transferee of late Sh. Ishar Dass, cannot be accepted or justified.

26. As per the submission of the respondent- L&DO, upon inspection of the site in question, a commercial store for ice creams was found running from the public land in question. Thus, the land is not being used for the purpose for which it was originally allowed for use on licence fee basis. Besides, the purpose of *tehbazari* license is to give opportunity to poor people to earn their livelihood by running small businesses on the basis of *tehbazari* license. The purpose of *tehbazari* license is not to promote big commercial establishments on public land, upon payment of paltry sum towards license fees. Therefore, there is no justification for occupation of public land by the petitioner on the basis of any *tehbazari* license. Mere fact that the petitioner may have been depositing property tax with the NDMC does not change the nature of occupation of the petitioner as unauthorised occupant on public land.

27. A full Bench of this Court in the case of ***Chandu Lal vs. Municipal Corporation of Delhi, 1977 SCC OnLine Del 130*** has held in categorical terms that a bare licensee having no interest in the property cannot maintain an action for its possession. Thus, it was held as follows:

“25. There is a catena of authorities in support of the proposition, that in the case of a license there is

something less than a right to enjoy the property in the license; it cannot be exercise by servants and agents and is terminable while on the other hand, in the case of a lease, there is a transfer of a right to enjoy the property or in other words the lessee is entitled to enjoy the property. A bare licensee having no interest in the property cannot maintain an action for its possession. A mere licensee has only a right to use the property. Such a right does not amount to an easement or an interest in the property but is only a personal privilege to the licensee. After the termination of the license, the licensor is entitled to deal with the property as he likes. This right he gets as an owner in possession of his property. He need not secure a decree of the Court to obtain this right. He is entitled to resist in defence of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespasser. If however, the licensor uses excessive force, he may make himself liable to be punished under a prosecution, but he will infringe no right of the licensee. No doubt a person in exclusive possession of the property is prima facie to be considered to be a tenant, nevertheless he would not be held to be so if the circumstances negative any intention to create a tenancy.”

28. The prayer on behalf of the petitioner for alternative allotment of land on the basis of ‘Gadgil Assurance’ has already been dismissed by this Court. Therefore, the petitioner cannot raise the said issue again. Even otherwise, it has been held by a catena of judgments that the ‘Gadgil Assurance’ was not applicable in the case of commercial sites.

29. It is also to be noted that during the pendency of the present

writ petition, possession of the site in question has already been taken over by the L&DO, Government of India on 16.12.2022.

30. This Court in the case of ***Ved Prakash Manchanda vs. Delhi Urban Shelter Improvement Board & Ors., 2022 SCC OnLine Del 2610*** has held that it is settled principle of law that no order can be passed to protect the possessory rights of an illegal encroacher of the Government land. Thus, it has been held as follows:

“12. It is well settled principle of law that no order can be passed to protect the possessory rights of an illegal encroacher of the Government Land. The Hon'ble Apex Court in the case of Jagpal Singh v. State of Punjab reported as (2011) 11 SCC 396 has taken judicial notice of the fact that since independence, in large parts of the country, unscrupulous persons using muscle powers, money power and political influence have systematically encroached on public utility land. The Hon'ble Supreme Court has also observed that this has been done with the active connivance with the State Authorities. The Hon'ble Apex Court deprecated the action of the State Authorities either in allotting the public utility land in favour of a person or in permitting an encroacher to occupy such public utility land. In another case, titled as M.I. Builders (P) Ltd. v. Radhey Shyam Sahu reported as (1999) 6 SCC 464; the Hon'ble Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs. 100 Crores. Hence while exercising the discretionary Jurisdiction under Article 226 of the Constitution of India, no relief can be extended to the encroacher of Government land to protect his possessory rights.”

31. It has come on record that L&DO is owner of 124 sq. yards and balance 12 sq. yards is owned by NDMC. Thus, there is no

justification for the petitioner to continue with unauthorised occupation of Government land, when the petitioner has been unable to show any right, title or interest over the land in question. The possession of the land in question has rightly been taken over by the respondent, being Government land.

32. The submission as made on behalf of the petitioner, that the land in question does not constitute public premises, as the same was never acquired, is found to be without any basis. When the whole case of the petitioner is based on the premise that his occupation of the land was legal on the basis of an earlier license granted for running Coal Depot, there is tacit admission by the petitioner that the land in question is public land. The petitioner has not been able to show any document of title in his favour, except the claim that the land was allowed to be occupied by the predecessor in interest of the petitioner when they migrated to India at the time of partition in the year 1947. There is no vested or legal right upon the petitioner for occupation of public land.

33. The contention of the petitioner with respect to imposition of damages for unauthorised occupation of public land is also found to be without any merit. The respondent had raised a fresh demand letter vide letter dated 07.03.2018 for payment of damage charges for occupation of area measuring 124 sq. yards with effect from 01.04.1987. The damage charges of Rs.2,99,77,090/- along with interest has rightly been imposed by Estate Officer, as upheld by the District Court. The petitioner having unauthorisedly occupied prime public land for a long time is liable to pay damage charges as imposed

upon him.

34. No merit is found in the present writ petitions. Accordingly, the same are dismissed.

**(MINI PUSHKARNA)
JUDGE**

APRIL 10, 2023/PB

