

IN THE HIGH COURT OF DELHI AT NEW DELHI

**SUBJECT : The Public Premises (Eviction of Unauthorised Occupants)
Act, 1971**

Reserved on: January 24, 2012

Pronounced on: February 15, 2012

W.P.(C) 3756/2011
&
CM No. 7861/2011

SATISH KAPOOR AND ANR. Petitioners
Through: Mr. Avinash Chander Bhasin and Mr. Amit Bhasin,
Advocates

versus

KM. ISHWARI ASSUDANI AND ORS. Respondents
Through: Mr. Anil Sharma and Mr. Vinod Kumar, Advocates for
respondent No. 1 and 2.
Mr. Pradeep Kumar and Mr. Eram Khan, Advocates for UOI
Ms. Manpreet Kaur, Advocate for
Mr. Mukesh Gupta, Advocate for MCD

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

1. Eviction of the petitioners from premises No. M-4A, Malviya Nagar, New Delhi of respondent- Municipal Corporation of Delhi (hereinafter referred to as the 'respondent- MCD') by recourse to The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 has been upheld by the Appellate Authority vide order of 4th May, 2011, which is under challenge by way of this writ petition, in which a direction is also sought to respondent – MCD to de-seal the premises in question and to restore its possession to the petitioners.

2. Undisputedly, in the year 1962 the first two respondents had leased out the subject premises to respondent- MCD for the purpose of residence of its employees, on monthly license fee and in the year 1974, the subject premises was officially provided to Smt. Raj Kumari i.e. mother of the petitioners for her residence, as she was employed with respondent- MCD. Since Smt. Raj Kumari died in the year 1989 and so retention of the premises in question after July, 1981 became unauthorized.

3. Representation of the petitioners was considered by the respondent and vide order of 13th February, 2008, it was decided to remit the outstanding rent payable to respondent - Ms. Assudani by MCD and to hand over the possession of the subject premises to aforesaid respondent- Ms. Assudani by MCD after getting it vacated from the petitioners herein. Thus, proceedings under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were initiated against the petitioners, whose stand was that late Mrs. Raj Kumari in her life time had purchased the subject premises from its owner i.e. Ms. Assudani vide Agreement to Sell of 19th January, 1982.

4. As per the petitioners, Specific Performance of the aforesaid Agreement was sought by the petitioners and what was the fate of the said litigation stands noted in the impugned order. Petitioners' suit as well as appeal stood dismissed and the finding of the civil court which has attained finality, stands reproduced in the impugned order.

5. Appellate Authority in the impugned order has adverted to the evidence on record and has repelled petitioners' plea of doctrine of part performance in respect of the subject premises. The plea of adverse possession also stands repelled by the Appellate Authority by relying upon decision in 'Jagdish Prasad & Ors Vs. Delhi Development Authority & Ors.' 2007 V AD (Delhi) 82.

6. The contention of counsel for the petitioners that the subject premises do not qualify to be the 'public premises' under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 has been negated in the impugned order by relying upon decision in 'Salahuddin Qureshi Vs. NDMC' 2008 (106) DRJ 627 .

7. When this petition was heard, it was vehemently urged by learned counsel for petitioners that they were in settled possession of the subject premises since the year 1982 and they had been illegally dispossessed after

the eviction order of 20th August, 2009 (Annexure P-17) of the Estate Officer and that the premises in question do not come within the purview of the 'public premises', as defined in clause- (e) of Section 2 of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The endeavour of learned counsel for petitioners was to stress that the relationship of the owners of the subject premises i.e. first two respondents and the MCD had snapped, as no rent or lease money was paid by MCD to the owners of the subject premises and belatedly in the year 2008, the rent/ lease money has been paid by MCD to the first two respondents i.e. the owners of the subject premises. Reliance was placed by learned counsel for petitioners upon decision in 'Inder Kumar Kapur & Ors. Vs. United India Insurance Co. Ltd.' 1999 I AD (Delhi) 262 to contend that the relationship of the Government when it is a Lessee qua the owner of a premises is that of a tenant and landlord. Thus, it was contended by learned counsel for petitioners that the provisions of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 would have no application and the remedy with the respondent-MCD is to file a civil suit for possession of the subject premises.

8. To the contrary, is the assertion of learned counsel for the first two respondents that there is no error of jurisdiction or law in the impugned order, as not only the definition of 'public premises' in The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 but even decision in Qureshi (Supra), makes it abundantly clear that any premises belonging to Municipal Committee or taken on lease by it, would come within the definition of 'public premises' under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

9. Attention of this Court was drawn by learned counsel for respondents No. 1 & 2 to a decision of the Apex Court in 'M/S Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India' AIR 1981 SC 670, wherein premises in possession of Life Insurance Corporation of India was held to be 'public premises' under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the plea that the provision of Delhi Rent Control Act, 1958 would apply, was negated.

10. So far as the plea of part performance or of adverse possession raised by the petitioners is concerned, it is pointed out by learned counsel for respondents No. 1 & 2 that these pleas are required to be noted, only to be rejected as the doctrine of res-judicata clearly applies, as the petitioners have finally lost their suit for specific performance of the Agreement to Sell

etc., which cannot be a substitute to a Sale Deed, as sale of immovable property can be by registered Sale Deed only as per dictum of a Division Bench of this Court in 'M. L. Aggarwal Vs. Oriental Bank of Commerce & Ors.' 128 (2006) DLT 407 (DB).

11. Upon hearing learned counsel for the parties and on perusal of the impugned order, material on record and the decisions cited, I am of the considered view that the contentions raised before this Court have been dealt with in its proper perspective by the Appellate Authority. As regards the decision in Inder Kumar (Supra,) is concerned, I find that this decision does not take note of the decision of the Apex Court in Jain Ink (Supra), and therefore, the decision in Inder Kumar (Supra), is per incurium. In fact, upon plain reading of the definition of 'public premises' in The Public Premises (Eviction of Unauthorised Occupants) Act, 1971, it becomes clear that any premises taken on lease on behalf of the Government or the Municipal Corporation etc. would come within the meaning of 'public premises'. In this regard, sub-clause (1) and (3) of Clause- (e) of Section 2 of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are required to be noted, which reads as under:-

'(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that secretariat;

(2) xxxxxx

(3) in relation to the [National Capital Territory of Delhi]-

(i) any premises belonging to the Municipal Corporation of Delhi, or any Municipal Committee or notified area committee;

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in possession of, or leased out by, the said Authority;

(iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory;'

12. Interpreting Section 2 (e) of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 a Coordinate Bench of this Court in Qureshi (Supra), has clearly held that a premises in possession of Municipal Corporation would come within the definition of 'public premises' and I find myself to be in complete agreement with the dictum in Qureshi (Supra).

13. Having concluded that the subject premises falls within the definition of 'public premises' under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I do not find the necessity of dealing with the plea of part performance or adverse possession raised by the petitioners in these proceedings because such pleas are clearly hit by doctrine of res-judicata, as petitioners claim for specific performance of the Agreement to Sell etc. finally stands negated. Thus, finding no palpable error in the impugned order, I dismiss this petition while leaving the parties to bear their own costs. Pending application stand disposed of as infructuous.

Sd./-
(SUNIL GAUR)
JUDGE

February 15, 2012