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Court : Delhi

Decided On : Dec-04-2012

Judge : M. L. Mehta

Appellant : Ramesh

Respondent : Dda and ors.

Judgement :

* THE HIGH COURT OF DELHI AT NEW DELHI + CM (M) 98/2010 Date of Decision:

04. 12.2012 RAMESH Petitioner Through: Ms.Prabhsahay Kaur, Adv. versus DDA & ORS. Respondent Through: Ms.Sangeeta Chandra, Adv. for DDA. CORAM: HONBLE MR. JUSTICE M.L. MEHTA M.L. MEHTA, J.

(Oral) 1. This petition under Article 227 of the Constitution is directed against the order of 12.03.2009 of ADJ passed in RCA No. 13/2008, whereby she dismissed the appeal filed against the judgment and decree dated 15.3.2008 of Civil Judge.

2. The petitioner had filed a suit for permanent injunction against the DDA and Estate Officer, claiming himself to be a tenant and in physical continuous possession in the suit premises bearing T-18 BTW, Quadam Sharif Estate, New Delhi. It was his case that he had been paying the rent of the suit premises to the DDA regularly at the rate of Rs. 10/- per month, which, the defendant has enhanced to Rs. 30/- per square yard per month, and thereafter at rate of Rs. 75

per square yard per month. Thereafter, the DDA filed a petition under Section 7 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short the Act) against the petitioner. Based on this premise, the suit was filed seeking permanent injunction against the respondents for restraining them from claiming and recovering rent at the rate of Rs. 75/- per square yard per month in respect of the suit premises and further to restrain them from proceeding against him under Section 7 of the Act.

3. On the preliminary objection taken by the respondent/DDA, a preliminary issue was framed as regard to the maintainability of the suit in the present form. The learned Civil Judge vide judgment dated 15.3.2008 dismissed the suit as not maintainable in view of the provisions contained in Section 7 and 15 of the Act.

4. The petitioner carried the matter in appeal which came to be dismissed by the learned ADJ, vide the impugned order dated 12.3.2009. These orders of the courts below are under challenge in the instant petition.

5. The main ground that has been urged in the instant petition and submitted by the learned counsel for the petitioner is that the petitioner was a tenant in the suit premises and not unauthorized occupant, and further that the proceedings under Section 7 (2) of the Act initiated at the instance of the respondent/DDA before the Estate Officer (respondent No.2) were not maintainable without notice of seeking explanation and till it was decided that the petitioner was not a tenant, but an unauthorized occupant in the suit premises. It was also the petitioners plea that both the courts below have erred in recording that the suit was not maintainable. The learned counsel has sought to place reliance upon the decision of the Supreme Court in Shangrila Food Products Ltd. & Anr. Vs. Life Insurance Corporation of India & Anr., AIR 199.SC 241.and a decision of Division Bench of this court in Dunlop India Limited Vs. Bank of Baroda and Another Vs. Bank of Baroda and Another, 2010 II A.D. (Delhi) 422 to contend that unless it was adjudged that the petitioner was unauthorized occupant, he was not liable to pay damages and thus, in the absence of the same, the proceedings could not be initiated under Section 7 (2) of the Act.

6. On the other hand, learned counsel for the respondent/DDA submitted that due opportunities were given to the petitioner and in fact, not only that he had admitted himself to be in unauthorized occupation of the suit premises, but had also appeared before the Estate Officer on receipt of notices. It was also submitted that the petitioner himself had stated in his letter dated 13.07.1994 that he had taken the suit premises from Bhagwan Devi and requested for assessing the damages in his favour. He had further agreed to abide by the rules and regulations of the DDA for getting the suit premises assessed for damages. It was also submitted that the damages were assessed at the prescribed rate of Rs. 30 per square yard per month and later at the rate of Rs. 75/- per square yard per month as per the policy approved by the Govt. of India. It was also submitted that even in the plaint, the petitioner at various places had admitted himself to be an unauthorized occupant of the suit premises and paying the damages, though, he had been alleging the same to be on higher side.

7. I have heard learned counsel for the petitioner as also the respondent/DDA and perused the record.

8. During the course of arguments, copies of certain documents were filed by the learned counsel for the petitioner, which have been taken on record. These are the copies of the letters written by the petitioner to DDA in response to the notices which he had received. From these, it would be gathered that not only he had received the notices in form F & G dated 22.7.2003 and 17.9.2003 respectively, but had given a reply dated 14.08.2003. This correspondence mentioned about outstanding damages as on 30.6.1994 for the period 1.7.1994 to 31.7.2001 as Rs. 1,88,700/-. In his reply dated 27.11.2003, copy of which is filed by him, he had stated having appeared in the court of Estate Officer R.K.Sharma on 14.08.2003 and having given the copies of the deposit slips of the damages for this period. He also stated in this letter that the whole of the outstanding amount as on 30.6.1994 had been deposited and he gave the details of additional deposit of Rs. 50,000/-. He also wrote letter to the respondent No. 2 (Estate Officer) on 17.08.2004 in response to his notice dated 2.07.2004. In this also, he mentioned having appeared before the Estate Officer B. Chadda on 27.11.2003 and having given the deposit slips of the damages of the period 1.7.1994 to 31.07.2001. He again

mentioned having deposited the whole amount as on 30.6.1994 and also gave the details of further deposit of Rs. 1 lakh till date. He again reiterated that this suit premises was earlier with Jai Singh and after his death, his wife Bhagwan Devi took the possession and now, he had acquired the possession. He requested to charge the damages at the same rate as being charged since 1970 and not at the rate of Rs. 30/-. As is noted above, similar request had already been made by him to the respondent DDA on 13.07.1994.

9. The cause of action giving rise to the instant suit was notice dated 18.10.2004 of the respondent No. 2 (Estate Officer). The contention of the petitioner was that this notice was not tenable inasmuch he was not given any notice to explain as regard to his status of occupation, which was not that of an unauthorized occupant, but as a tenant. This contention is not only untenable, but is frivolous. As is noted above, the petitioner acquired the premises from Bhagwan Devi and thus, had stepped in her shoes. She, in turn, had stepped in the shoes of her husband and, who undisputedly was an unauthorized occupant of the suit premises, and was paying damages. The petitioner himself had requested to DDA to assess the damages and further to abide the rules and regulations of the DDA. He has not only been depositing the damages as claimed, but has been appearing before the Estate Officer as is noted above. The matter does not end here. Even in response to the instant notice dated 18.10.2004, he made a representation to the Estate Officer, wherein he again admitted having received earlier notice of 2.07.2004 and appeared before the Estate Officer on 17th August and having given the photocopies of the slips of deposits of damages from 1.7.1994 to 31.7.2004. In this response also, he had requested the damages to be charged at the old rate and not at the rate of Rs. 75 per square yard per month as claimed in the instant notice. He reiterated his request of charging the damages at the same rate as it was since 1970.

10. Though at various places in the plaint, the petitioner has stated about the claim of damages as rent, but the tenor of the plaint would show that he himself has been claiming to be an unauthorized occupant and paying damages. His whole case had been that the damages claimed were on the higher side. The case of the respondent/DDA has been that the damages at the rate of Rs. 30 per square yard

per month and later at the rate of Rs. 75/- per square yard per month have been claimed as per the policy duly approved by the Govt. of India. From all this, it would be seen that it cannot be said that there was no determination of the status of the petitioner as an unauthorized occupant of the suit premises before issue of notice dated 18.10.2004. Vide this notice of 18.10.2004, he was called upon to pay the arrears of damages with effect from 1.8.2001 to 31.7.2004 at the rate of Rs. 75/per square yard per month. Vide this notice under Section 7 (3) of the Act, he was also called upon to show cause on or before 19.11.2004 as to why the order requiring to pay the damages should not be made. As is noted, he had filed a reply to this notice before the Estate Officer and requested for charge of damages at the same rate as it was since 1970. From all this, I do not see that the notice suffered from any infirmity or illegality.

11. Having noted as above, the only cause of grievance of the petitioner that appears to be is the rate at which the damages were assessed by the Estate Officer. According to the respondent/DDA, these were assessed as per the policy of the Govt. of India. Be that as it may, if at all, there was any grievance of the petitioner in this regard, the same was not by way of a suit for injunction simplicitor. In that view of the matter, I am in agreement with the learned Civil Judge as also the learned ADJ that the suit for injunction was barred under Section 15 of the Act. In any case, the petitioner had agreed to abide by the rules and regulations of the DDA for getting the suit premises assessed and he having stepped into the shoes of Bhagwan Devi, an unauthorized occupant herself, was now estopped from disputing the assessment of the damages as per the rules and regulations.

12. In view of my above discussion, I do not see any infirmity or illegality in the impugned orders of the learned ADJ or that of the Civil Judge. The petition has no merit and stands dismissed. M.L. MEHTA, J.

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